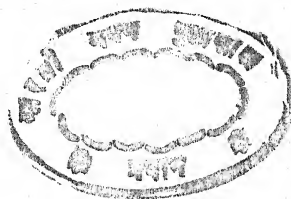


# LOCAL GOVERNMENT IN EUROPE



THE CENTURY  
POLITICAL SCIENCE SERIES

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# LOCAL GOVERNMENT IN EUROPE

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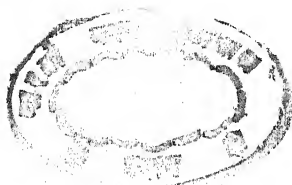
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## PREFACE

The study of European local government has long been handicapped in the United States by the lack of adequate, up-to-date textbooks and documentary materials. Since the World War, and especially in the past ten years, there has been a very considerable reorganization of local government in all the leading European countries. The dictatorial régimes have made the most sweeping changes, but even the democratic governments have found it necessary to alter materially their local institutions and the relations between local and central administration.

In the work that is offered herewith the authors have attempted to supply the essential materials for a study of the new situation. Each has written a condensed description of local government and of central-local relations in one country, and each has also supplied, in his own translation where needed, an abbreviated copy of the principal local government law or laws. Short bibliographies, and additional references in the footnotes, furnish guides to further reading for students who wish to go deeper into the subject. It might have been possible for a single person to write a volume on European local government, but the difficulties would have been tremendous. Local institutions and their operation can be understood only by one who studies them at first hand and for a considerable period. A lone scholar attempting to compass so broad a field would have to be able to read in at least four languages (German, French, Italian, Russian) besides English, and would have to live and study successively in one country after another for a considerable number of years. Rather than wait for such a person to appear and to do his work it seemed better to utilize the existing scholarly resources of our own country. The editor feels that the five scholars who have contributed to this volume were almost ideally equipped to write their particular chapters. Each has lived and studied in the country of which he writes, and has by his other publications become a recognized authority on its government.

Essential biographical information as to each author will be found at the beginning of his chapter.

The method herein followed is that of presenting the local government system of each country in a separate chapter, each a little monograph in itself. Even so, since substantially the same topics are dealt with in each chapter, the volume lends itself nicely to the preparation of comparative studies on particular subjects such as council organization and powers, the local chief executive, local personnel, finance, and central supervision. Such comparative studies, cutting across the local government systems of all five countries, can be made very illuminating.

Each of the several chapters is then to be looked upon as a separate production, for which its author is to be given full credit and for which he assumes responsibility. The editor wishes especially to thank the several authors for their loyal coöperation in a project that we all hope will prove of great usefulness to laymen, specialists, teachers, and students, both here and abroad. Thanks are due also to Professor Frederic A. Ogg, Editor of The Century Political Science Series, for his many helpful suggestions.

W. A.

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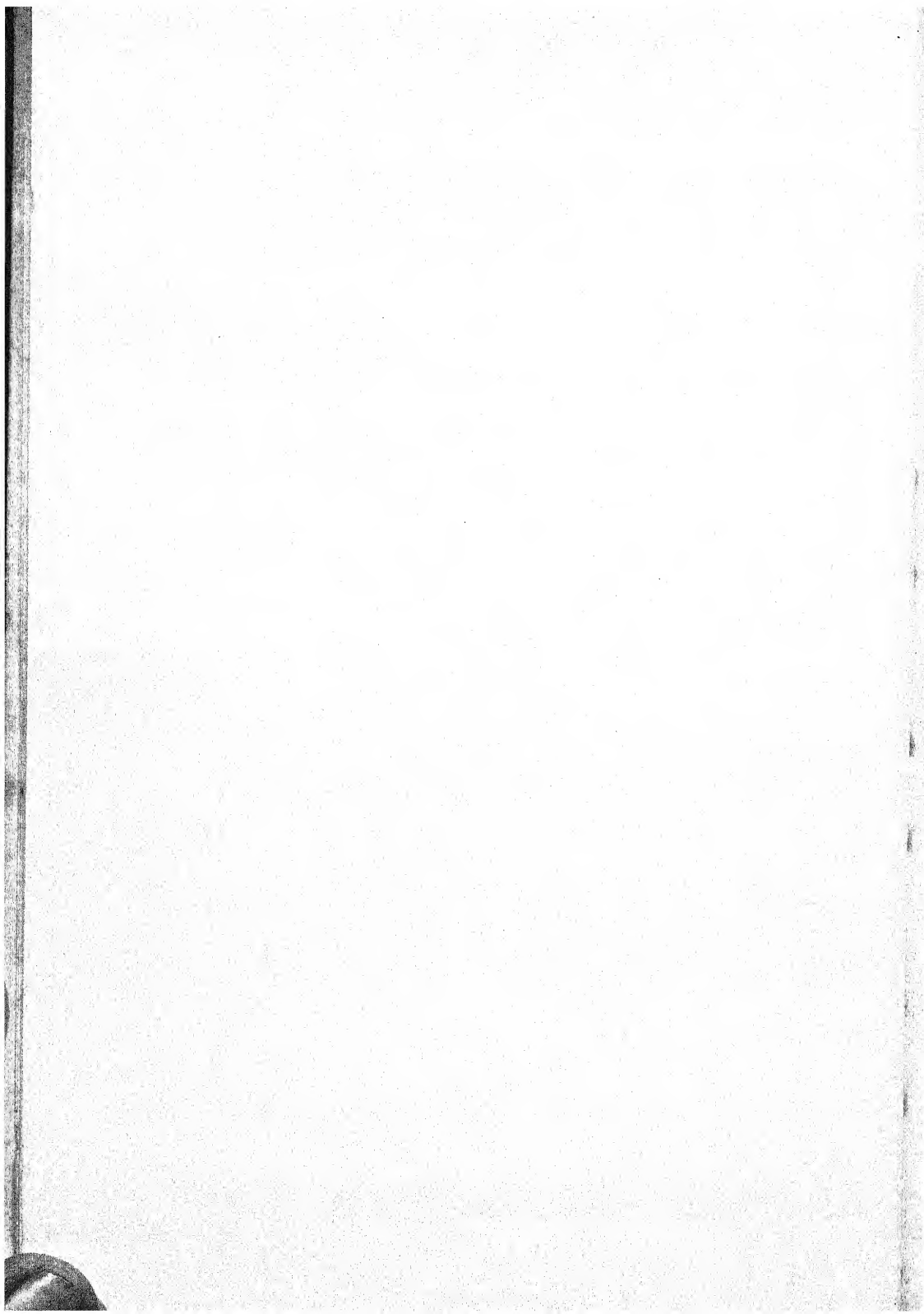
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## INTRODUCTION

### Local Government in a Changing World

*By William Anderson*

Unquestionably the dominant fact in the world scene since 1914 has been the international madness that began even before the World War and that has gripped men with a sense of dread through changing and unsettled conditions ever since. Men and women dwelling near the principal centers of disturbance live in constant fear of the morrow, and even those farther removed have their sleep disturbed by uncomfortable dreams of war. Well might we ask with the psalmist of old,

Wherefore do the nations rage,  
And the peoples plot in vain?

Is it the whole end and purpose of government to lead nations into strife with each other? What do the people gain by their squandering of wealth and life so lavishly on wars and ever more wars? Are the philosophies of government now in mortal conflict so important that nations must be sacrificed in order that one or another shall prevail? Even here in the United States, remote as we are from the principal scenes of strife, we do not escape the din of battle and the dread of what another day may bring. The newspapers give us no rest, but trouble us daily with rumors of war, blazoned forth across their pages in startling headlines. Weeklies, monthlies, the radio, the gossip of the streets, only aggravate our nervous fear for our future security. Governments everywhere are straining every muscle and utilizing every resource to prepare for the fateful war that seems to many persons inevitable.

The international tension seems inextricably bound up with a marked tendency toward centralization of power and expansion of governmental functions in the capitals of the leading nations. Which is cause and which is effect, it would be impossible to say. Suffice it to

point out that the World War was accompanied by striking centralization of power in the leading countries; that it was followed not primarily by the spread of democracy and self-government but by the establishment of strong and ruthless dictatorships in a number of European powers; and that the resultant threat to their security has compelled even the more democratic countries to tighten their belts, increase their armaments, and vest greater power in their central governments. The attempt at the same time in a disorganized economic world to relieve unemployment, advance the public services, and raise the standard of living of the people, has only increased the centralization of power that has been going on. Unquestionably national governments and their international relations have today an unrivaled place at the center of the stage of political action. Various attempts, as through the League of Nations, to adjust international differences, and to soften the asperities between peoples, have had all too little success.

Is it mere self-deception—whistling in the dark to keep up our courage—evasion of the real problems of our times—utopian seeking of security—to turn away from this dread international scene to consider another phase of government? Are the warlike, violent, and destructive activities of government the only ones of importance, or may we not profit also by a consideration of their peaceful and constructive efforts? Must we give all our attention to the blustering and blows of national governments and whole nations against each other, or may we not find some importance, perhaps even some ray of hope that reason will prevail, in the day-to-day constructive work of the hundreds of thousands of local units of government?

It is an important but neglected fact that in every nation, whatever its dominant political philosophy, whatever the form of its national government, there is a system of local government that is doing much the same work everywhere. The existence of great nation-states presupposes the coexistence of a system of local units for the administration of national services and the enforcement of national laws. It would be almost a physical impossibility to administer from one center such as Berlin, Paris, London, or Washington, all the detailed operations of the multitudinous public services of a modern national state. One can scarcely picture in his mind the thousands of telegraph and telephone lines, the millions of messages, letters and circulars, the tremendous

coming and going of people by ship, rail, bus, automobile, and airplane, if the national capital were to serve also as a national county seat, and a city hall for the entire people.

Difficult as such a concentration would be for the carrying-out of national laws of uniform application throughout the country, it might conceivably be possible. Even if this much were possible, however, and not unduly expensive, it would fail to provide for the thousand and one other needs of the people that arise in the locality, that differ from place to place, and that must be ministered to differently in each community because of local variations in population, wealth, topography, occupations, resources, and sentiments. A national government may, indeed, authorize city planning, parks, housing projects, local water supplies and what not, but each community must plan and administer each particular project according to local conditions.

Thus the areas or units of local administration—the counties, cities, villages, townships, *gemeinden*, *communes*, and special districts—found more or less generally in all national states, serve a twofold purpose. On the one hand they are areas and agencies of the central government for its convenience in making effective its own policies and in administering the laws of nation-wide application; on the other hand they are units or entities of local political life for achieving the special ends desired by the local community. Some units are primarily for these local purposes, and others exist mainly for the convenience of the national government, but nearly every one represents a mixture of both types of purposes.

The importance of local government has frequently been stressed by English and American leaders and statesmen. Mention may be made of Thomas Jefferson, John Stuart Mill, and James (Viscount) Bryce, as well as that philosophical French commentator on *Democracy in America*, Alexis de Tocqueville. These men and many others of liberal mind thought of local government as *self-government*. They pictured the local citizens as participating in town meetings and elections, and holding office in their turns, so that all gained a sense of public responsibility, ability to coöperate with others, and knowledge of community affairs. De Tocqueville expressed these ideas so eloquently and so cogently that we cannot do better than quote him.

“The town or tithing, then, exists in all nations, whatever their laws

and customs may be: it is man who makes monarchies and establishes republics, but the township seems to come directly from the hand of God. But although the existence of the township is coeval with that of man, its freedom is an infrequent and fragile thing. A nation can always establish great political assemblies, because it habitually contains a certain number of individuals fitted by their talents, if not by their habits, for the direction of affairs. The township, on the contrary, is composed of coarser materials, which are less easily fashioned by the legislator. The difficulty of establishing its independence rather augments than diminishes with the increasing intelligence of the people. A highly civilized community can hardly tolerate a local independence, is disgusted at its numerous blunders, and is apt to despair of success before the experiment is completed. Again, the immunities of townships, which have been obtained with so much difficulty, are least of all protected against the encroachments of the supreme power. They are unable to struggle, single-handed, against a strong and enterprising government, and they cannot defend themselves with success unless they are identified with the customs of the nation and supported by public opinion. Thus, until the independence of townships is amalgamated with the manners of a people, it is easily destroyed; and it is only after a long existence in the laws that it can be thus amalgamated. Municipal freedom is not the fruit of human efforts; it is rarely created by others; but is, as it were, secretly self-produced in the midst of a semi-barbarous state of society. The constant action of the laws and the national habits, peculiar circumstances, and, above all, time, may consolidate it; but there is certainly no nation on the continent of Europe which has experienced its advantages. Yet municipal institutions constitute the strength of free nations. Town-meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions, it cannot have the spirit of liberty."<sup>1</sup>

This author of a century ago puts his finger on a number of points important to the readers of this volume. For emphasis here we select his remark that no nation on the continent of Europe has experienced the advantages of local *self*-government. He perhaps gave too little

<sup>1</sup> *Democracy in America*, translated by Henry Reeve, 1904 ed., vol. I, chap. 5.

thought to the institutions of Switzerland and of the Scandinavian countries, but essentially his observation is sound. Local self-government in the Anglo-American sense is a very special contrivance. It includes the regular practice and the right of the local voters in a community under a broad franchise to participate in public meetings such as those of the town, where such are held; to put forward public proposals by speech or petition; to elect their local officers; and through their elected officials to control local affairs, determine local policies, and even to administer some central-government laws according to local wishes and interests. Anything much short of this extensive participation of the local citizens in local public affairs would not be considered true local self-government.

Nevertheless we find writers in other countries, Germany for example, who insist that their peoples have local self-government, and even a more real local self-government than the English-speaking countries. This theory is asserted by some despite the facts that local elections, parties and politics have been abolished, and that there is left no formal way in which the people generally can participate in local affairs. Officers appointed from above, assisted by appointed advisory councils, and under constant supervision by the party and the central authorities, rule the localities. The theory that this is local self-government rests upon the notions (a) that there is a very broad grant of legal powers to the local units, and (b) that each organized community as a totality, through its officers, can do many things "on its own responsibility." For students of local government the important lesson is that different peoples look at the same problem through their own spectacles, and consequently have different ideas and distinctive institutions. It is necessary to grasp the central ideas of each system if we would understand it.

But the ideas on local government, we must bear in mind, are themselves to a considerable extent the product of the nature of the particular people, its history, stage of development, economic conditions, social institutions, and general outlook on the world. Russia, for example, is developing a local government system that is a curious amalgam of pre-war Russian institutions and the soviet system worked out by the Communist ideologists. Its virtual pyramid of soviets, from the villages up to the All-Union Congress, with a most sweeping grant

of powers to the soviets at every level to control almost everything below them, is one of the administrative marvels of the modern age. How efficiently it is working, and how long it will stand up, no one can say, but the same can be said of the systems of centrally-appointed and centrally-controlled local executives in the Italian and German systems of today, each the outgrowth of a dictatorial political philosophy operating within the frame of an older set of political institutions.

Enough has now been said, perhaps, to indicate that important differences will be found among the local government systems of the five countries dealt with in this book. These differences cannot fail to have some effect ultimately in producing distinctive results. More important for the present is the fact that whatever the political theory that dominates the state—whether the liberal democracy of France and England, the Communism of Russia, or the Fascism and National Socialism of Italy and Germany—and whatever the form of its central government, every large modern state is being driven by certain powerful economic and social forces to alter the position, the powers, and the functions of local government—and all are being driven in very much the same direction.

Of all the forces that are changing the position of local government, none is more important than that complex of changes that are leading us from *laissez faire* to collectivism, and that are making the modern state a *public service state*. In every country affected by modern industrialism, the tide runs strongly toward increased governmental functions. A complete catalog of recent developments would be impossible. To give some idea of what is going on, it is enough to mention the great systems of highways and public education, public health, welfare, and relief work, measures for old-age, unemployment, and health insurance, land-reclamation, forestry, and housing projects, water power and electrical development, government banking and transportation enterprises, and the many sweeping measures for aid to, and regulation of, both agriculture and industry.

This tremendous enlargement of the scope of governmental functions has given local government a new importance. As previously noted, it would be practically impossible to carry on all these manifold activities throughout the national territory without the effective co-operation of all the local units of government. Furthermore, the func-

tions of local units, especially in the case of cities, have themselves increased so rapidly that local taxes and expenditures have risen to a position of immense importance in the national economy. Consequently, local government, which in *laissez faire* days could be neglected and ignored by the national authorities, is now everywhere and of necessity being drawn into, and being integrated with, the central administrative machinery. The thousands of local hands that do so much of the work must be closely articulated with the central brain that makes the plans and gives the orders. Control and decision are necessarily more centralized in a planned and integrated society. What was once local *government*, with the power to make many local decisions, tends to become mere local *administration* of services and rules devised at the center. Whereas once the test of goodness in local government was its tendency to preserve liberty and to promote the training of the citizen in his public responsibilities, today the twin tests are economy and efficiency in producing certain administrative results.

In the chapters that follow the reader will note certain problems of local government as standing out above all others. The efficient functioning of local units depends in every country upon wise arrangements having been made with respect to a few major issues. These may be summarized as follows:

*First*, the number and the adequacy of the areas and units of local administration. It is obvious that tens of thousands of petty villages will not be able to perform certain services as well as a few hundred larger units that are able to afford, and can economically utilize, the proper equipment and adequate staffs of trained personnel.

*Second*, the legal status and the powers granted to local units. It is a matter of considerable importance that there should be no unnecessary legal obstruction to the effective performance of the public services.

*Third*, the form to be given to the local organization. Here must be considered especially questions of the size and organization of local legislative bodies, if any; the local executive organization; and the relations between the two. There are many related questions, including that of responsibility to the body of local citizens, or popular control.

*Fourth*, the range and the nature of the functions devolved upon the local authorities.



*Fifth*, ways and means of financing local services. There is many a headache in local finance.

*Sixth*, the training, selection, control, compensation, discipline, and removal of local government personnel.

*Seventh*, the nature and extent of central supervision and control over local authorities, both in their finances and in their services.

*Eighth*, means for granting redress to citizens whose rights are invaded by the actions of local officers and employees.

There are other points of interest, but these constitute the major problems in any system of local government. In the pages that follow, as the reader will observe, it appears that every country has somewhat distinctive policies on every principal point. There are certain broad differences, of course, between the democracies on the one side and the dictatorships on the other, but also within each group there are variations worthy of remark. With this much of a sketch of the way that lies ahead, we introduce the reader to the first of our authors, who will show him the distinctive features of the English local system.



# ENGLAND

BY

R. K. GOOCH

### *The Author*

ROBERT KENT GOOCH, Professor of Political Science at the University of Virginia, was born September 26, 1893, in Roanoke, Va. He holds B.A. and M.A. degrees from the University of Virginia, and B.A., M.A., and D.Phil. degrees from Oxford. Before joining the faculty of his present university, he taught for a time at the College of William and Mary. In addition to various articles and reviews, he has written the following: *Regionalism in France* (New York, 1931); *The French Parliamentary Committee System* (New York, 1935); *The Government of England* (New York, 1937); *Source Book on the Government of England* (New York, 1939); and *Manual of Government in the United States* (New York, 1939).

## Chapter I

### ENGLAND

#### PART I. LOCAL GOVERNMENT IN ENGLAND

##### *Sec. I. Origins and Development*

Mr. H. G. Wells somewhere asserts that democracy cannot survive far from the village pump. If by this he means that political democracy is effectively applicable only on a very small scale, the accuracy of the dictum is somewhat doubtful. On the other hand, if, as is more likely, the meaning is that political democracy flourishes best where its roots are planted deep in vital and vigorous conditions of local self-government, more than a little truth is contained in the assertion.

Local government in England has more than once been said to be a training school for self-government. In any event, there can be little doubt but that the study of English local government is highly instructive and exceedingly important. The relative excellence of such government may be taken for granted. Many of its aspects have often been admired and envied in other countries. Evidences of influence may be observed in various parts of the world.

Things that are English seem often to be characterized by anomalies and paradoxes. The history of English local government is an example in point. It is a history of something that is both very new and very ancient. The existing system of local government is, in almost all its parts, a modern creation. At the same time, few, if any, of these parts are in reality properly to be understood except with reference to a distant past and a long and gradual development. Thus, for example, of the present-day territorial units of local government, each type is of modern origin; and yet, as will be seen, each corresponds to a unit the origin of which is almost as ancient as the earliest recorded history.

A flourishing local government in England is usually agreed to have prevailed in what are called Anglo-Saxon times. Indeed, the constitutional history of the period antedating the Norman Conquest is commonly regarded as being more important in respect of local government than of central government. Communities were established; and strong community sentiment developed. An assembly of members of the community, usually referred to as a "court," became the governing body. Indeed, it came, through personification, to be considered to be the community itself.

Conditions at the time of the Norman Conquest were such as to demand strong central authority. This the Normans furnished. They did not sweep away the local institutions that they found upon their coming; but they brought them under central control, a kind of control little known in the period before the Conquest. The instrument of such centralization was the sheriff. This officer of the king had, it is true, attained a not unimportant position in Anglo-Saxon times; but the Normans developed for him a position of strong general control over local government. By the twelfth century, the sheriff had become the head of such police system as existed and, in person or by deputy, the presiding officer in local assemblies. In the course of his duties he handled large sums of money; so that the king and his council were interested in keeping a close control over this man who maintained control over local government. This situation prevailed until the fourteenth century. It became altered when the sheriff was gradually supplanted by officers that are now known as justices of the peace. These officials remained in control of local government until well into the nineteenth century.

The modern history of English local government begins immediately after the enactment of the great Reform Bill of 1832. Following this transfer of political power to the middle classes, a period of reform ensued that has reached down to the present day. A series of acts of Parliament has been passed, several of which represent great landmarks in the history of local government. The first was known as the Poor Law Amendment Act of 1834. This act set up a body of three Poor Law Commissioners, who for more than a decade controlled the administration of the poor law. The modern concept of control by central government over local government may be con-

sidered to date from this time. In 1835, the important Municipal Corporations Act was passed. This act was followed by a number of amendments; and the amendments and the principal provisions of the original act were consolidated and reenacted as the Municipal Corporations Act of 1882. These acts established the essential features of present-day local self-government in the principal English urban communities, the boroughs. More especially, they erected locally elected councils as the principal governing bodies of boroughs. The Local Government Act of 1888 extended to the counties the principle of elective councils. Justices of the peace, who up to that time had constituted the principal governing agency of counties, were reduced substantially to their present essentially, though not entirely, judicial position. The Local Government Act of 1894 established the present system of popular government for parishes; and it created urban and rural districts, vesting their government in elective councils. Reform of the government of London, which had been begun by the Local Government Act of 1888, was completed in its general outlines by the London Government Act, 1899. Meanwhile, various other acts of much moment to local government were being placed on the statute book. Several that dealt with public health and education are especially important. Thus, acts of the nineteenth century established modern areas of local government, created elective councils for these communities, vested substantial powers in them, and, at the same time, developed the principle of central supervision of local government. In the last respect, reorganization took place in 1917. The Local Government Board, which had been established in 1871, was abolished. Its functions were transferred to two new central departments, to the Ministry of Transport and, more especially, to the Ministry of Health. Finally, two far-reaching and elaborate Local Government Acts were passed in 1929 and 1933, respectively.<sup>1</sup> The first was especially important with respect to poor law and to financial relations between central government and local government; the second represents a consolidation of the multitude of provisions that determine the constitution of the various existing types of local government.

<sup>1</sup> They are Local Government Act, 1929 (19 Geo. 5, c. 17) and Local Government Act, 1933 (23 & 24 Geo. 5, c. 51). Cf. Part II, pp. 88-106, *infra*.

*Sec. 2. English Local Government Areas*

The modern division of England and Wales into areas of local government has had an uneven history of about a century. Beginning in the second quarter of the nineteenth century, a tendency developed for large numbers of special districts to be added to or superposed upon the network of areas surviving from earlier times. This tendency, with the resulting proliferation of areas, continued, roughly speaking, until the beginning of the last quarter of the nineteenth century. At that time, multiplication was gradually checked. Thereupon, a definite tendency towards simplification set in. It has, on the whole, continued until the present. Today, the division of England and Wales into areas for purposes of local government is no longer highly complicated.

At the present time, the legal basis for English and Welsh areas of local government is to be found in the Local Government Act of 1933. The high degree of consolidation that has supplanted earlier confusion is indicated by the simple terms of the act. The pertinent provision is worded as follows:

For the purposes of local government, England and Wales (exclusive of London) shall be divided into administrative counties and county boroughs, and administrative counties shall be divided into county districts, being either non-county boroughs, urban districts or rural districts, and county boroughs and county districts shall consist of one or more parishes.

*Counties.* The largest area into which England and Wales are subdivided is the county. When, on a conventional map of these countries, the counties are shown, the county involved is what is known as the *historic county*. This area is, of course, descended from the Anglo-Saxon shire. England contains forty historic counties—twenty maritime and twenty inland—and Wales, which was divided into counties in the course of its conquest, contains twelve. It is not these fifty-two, however, that are involved as counties in local government, but rather, as indicated by the terms of the Local Government Act of 1933, the units known as *administrative counties*. The first schedule of the act lists the administrative counties of England and Wales. If the administrative county of London, carved from parts of three historic counties, be included, the administrative counties number

sixty-two, fifty in England and twelve in Wales. The difference of ten between the number of historic counties and the number of administrative counties is to be accounted for by the fact that seven English counties have in one way or another been divided. Thus, London aside, Lincoln is divided into three "Parts" and York into three "Ridings." Suffolk and Sussex are divided each into "East" and "West." The Isle of Ely, the Isle of Wight, and the Soke of Peterborough have been separated from Cambridge, Southampton,<sup>2</sup> and Northampton, respectively.

The following table furnishes a few approximate statistics concerning the area and population of the administrative counties other than London:

TABLE I  
AREA AND POPULATION OF ADMINISTRATIVE COUNTIES

	<i>Area in Acres</i>	<i>Population</i>
More than 1,000,000 .....	7	5
500,000-1,000,000 .....	25	6
250,000- 500,000 .....	21	18
100,000- 250,000 .....	5	18
50,000- 100,000 .....	3	9
20,000- 50,000 .....	..	4
10,000- 20,000 .....	..	1

*Boroughs.* For purposes of local government, England and Wales are not quite wholly covered by the administrative counties. On the same plane with these counties—and, hence, sharing with them the characteristic of being *primary* divisions of England and Wales—are the important urban areas known as *county boroughs*. County boroughs, it is true, are normally contained geographically within the confines of an administrative county; but, in matters of local government, they are autonomous, being independent of the county. A few municipalities possessed, from early in the Middle Ages, this characteristic of independence; but county boroughs as such are the creation of the Local Government Act of 1888.

County boroughs constitute merely one, though the principal one, of two subdivisions of the generic class of urban areas known as

<sup>2</sup> This is the official name. The historic county is Hampshire.

*boroughs*. The other kind of borough is known technically as a non-county borough, and currently as a municipal borough.

Municipal boroughs are, governmentally, part of the administrative county in which they are located. As *areas*, they do not differ essentially from county boroughs. All boroughs are communities of relatively dense population that have received charters of incorporation and are, thus, governed by municipal corporations. Only a few of them—usually, though not necessarily, with a bishop and a cathedral—are called, in accordance with normal American practice, *cities*. Such designation, granted historically by the king, does not affect borough status.

The Local Government Act of 1933, consolidating various provisions from former acts, contains a number of sections regulating in considerable detail the procedure according to which a municipal corporation may, through the grant of a charter of incorporation, be created. A municipal corporation is defined by the act as "the body corporate constituted by the incorporation of the inhabitants of a borough." In general, the community involved presents a petition to the Privy Council. Previous notice must be given to the county and to the Ministry of Health. In the case of boroughs in general, a population of at least 20,000 is usually, though not necessarily, required. For county boroughs, there is a legal requirement of a population of 75,000 or upwards.<sup>8</sup> Inquiries are held; publicity is required; and opportunity for opposition is afforded. The charter may be granted either by order in council or by act of Parliament. The latter method is mandatory if opposition is offered.

The table on page 9 gives some indication, with respect to boroughs, of the range in size according to population.

*County districts*. According to the terminology of the Local Government Act of 1933, non-county or municipal boroughs are *county districts*. However, the term *district* is more commonly applied to areas of local government known as *urban districts* and *rural districts*. Hence, the map of all the administrative counties, with county boroughs excluded, is completely covered by three kinds of county districts,—namely, municipal boroughs, urban districts, and rural districts.

<sup>8</sup> This number was substituted for 50,000 in 1926. At present, about one-fourth of the county boroughs have a population under 75,000. See Table 2, p. 9, *infra*.



TABLE 2  
BOROUGHES AND THEIR POPULATIONS

<i>Population</i>	<i>County Boroughs</i>	<i>Municipal Boroughs</i>	
		<i>England</i>	<i>Wales and Monmouth</i>
More than 1,000,000 .....	1	0	0
500,000 to 1,000,000 .....	3	0	0
200,000 to 500,000 .....	14	0	0
100,000 to 200,000 .....	24	7	0
50,000 to 100,000 .....	38	27	0
10,000 to 50,000 .....	3	140	9
Under 10,000 .....	0	76	21 *
Total .....	83	250	30

\* Includes one of less than 1,000 population.

Urban and rural districts were set up by the Local Government Act of 1894. Historically, they correspond to the areas next under the shires of Saxon times. These areas were known as hundreds <sup>4</sup> or, in some cases, by other curious names like rapes and wapentakes. In their more immediate history, urban and rural districts are descended from sanitary districts established by the Public Health Act of 1872. Hence, the present boundaries of urban and rural districts are naturally determined in large part by those preëxisting areas. Nevertheless, considerable modification has taken place. The Local Government Act of 1933 codifies numerous detailed provisions of law regulating the manner in which an administrative county, acting through its council, may, with or without a proposal from one or more localities involved, create new urban and rural districts, may divide existing districts, or may alter their boundaries. The Local Government Act of 1929 stipulated that every county council should, as soon as possible, hold conferences with the various districts in the county and review the conditions existing in the districts, with a view to determining the advisability of changes. The tendency has apparently been for rural sections to be added to urban districts, in the belief that such sections would get the benefit of more efficient government by urban communities with superior resources. Under the Local Government Act

<sup>4</sup> Hundreds still exist for certain judicial purposes.

of 1933, other reviews of the same kind are allowable; but "the interval between any two reviews . . . shall in no case be less than ten years."

There are at present about 700 urban districts and 560 rural districts. In general, the number of these districts has tended to decrease. One administrative county contains no urban districts. A few counties contain only two or three rural districts. The largest number of urban districts in one county is something more than 100, of rural districts about 30. The typical urban district may be thought of as an urban community not large enough to be made a municipal borough, with a fringe of rural territory. The typical rural district is primarily an expanse of countryside sprinkled with villages. However, anomalies are not lacking. Some urban districts are much larger than small boroughs, whereas some are primarily rural in nature. Some rural districts contain an important urban community.

The following table will give some idea of the population variations in the several urban and rural districts:

TABLE 3  
URBAN AND RURAL DISTRICTS AND THEIR POPULATIONS

<i>Population</i>	<i>Urban Districts</i>		<i>Rural Districts</i>	
	<i>England</i>	<i>Wales and Monmouth</i>	<i>England</i>	<i>Wales and Monmouth</i>
More than 100,000 . . . . .	2	1	0	0
50,000 to 100,000 . . . . .	9	0	4	1
30,000 to 50,000 . . . . .	30	9	28	4
20,000 to 30,000 . . . . .	65	5	59	7
10,000 to 20,000 . . . . .	163	13	211	11
5,000 to 10,000 . . . . .	144	15	109	24
1,000 to 5,000 . . . . .	183	32	66	19
Less than 1,000 . . . . .	27	3	14	5
Total . . . . .	623	78	491	71

*Parishes.* The area of local government in England and Wales that stands on the third plane—administrative counties and county boroughs standing on the first, municipal boroughs and urban and rural districts on the second—is the parish. This area, which is normally the smallest, corresponds in a general way to the "tun" or town of Anglo-Saxon times. Indeed, in those early days, *ecclesiastical* parishes were, follow-

ing the introduction of Christianity into England, established by the church in such a way as generally to be identical with the tuns. The tuns, as units of local government, went into eclipse during the feudal period; but they were in a sense revived in the reign of Elizabeth through the delegation to the parishes of the important civil function of care for the poor. In the eighteenth century, the parishes did the greater part of the work of local government. Their importance dwindled considerably during the nineteenth century; but towards the end, in 1894, their present status was first established through the Local Government Act of 1894, sometimes known as the Parish Councils Act. The various legal provisions of this and other acts regulating parishes in England and Wales were incorporated with modifications into the Local Government Act of 1933.

Parishes, distinguished as urban parishes, are to be found in boroughs and urban districts. However, they are of no importance for local government. The areas that possess significance in this respect are found in rural districts and are known as rural parishes. Of these there are at present about 13,000.

*The metropolis.* Since early times, the position of London has been a peculiar one. At present, so far as local government is concerned, the capital still differs in many respects from the other areas of the country. The metropolitan area, as it emerged into modern history, displayed almost chaotic conditions. Furthermore, owing largely to the influence of concentrated wealth at its center, it resisted many of the effects of the movement for reform in the first half of the nineteenth century. However, the Local Government Act of 1888, after several less far-reaching efforts had been made, established the administrative county of London. It is not only wholly urban in character but, unlike the typical administrative county, is wholly surrounded by urban territory. The area extends over slightly more than a hundred square miles and has a population of about four millions. It is considerably smaller than the community popularly thought of as London, which is a great agglomeration, frequently known as Greater London, extending about fifteen miles in all directions from Charing Cross. Greater London is thus nearly 700 square miles in extent. It contains a population of between seven and eight millions. Regret is frequently expressed that the administrative county of Lon-

don originally was made to comprise so small a part of the great metropolitan district.

At the heart of the administrative county of London is located the "City of London." This area, popularly associated with high finance, has an extent of about one square mile and consists, it is said, of the most valuable building land on earth. Its night population<sup>5</sup> is listed as slightly more than 9,000. Its position is for many reasons, principally historical, unique.<sup>6</sup> The city had, of course, existed for centuries before the Local Government Act of 1888. Around it, as geographical subdivisions of the Administrative County of London, were established by the London Government Act of 1899 twenty-eight urban areas of borough standing, known as *metropolitan boroughs*. These boroughs were created out of preëxisting parishes and miscellaneous urban communities. At present, the metropolitan boroughs, aside from their immediate proximity to one another and to other urban territory, are, in general, similar to other municipal boroughs. As individual urban communities, all of them are of respectable, and some of them of imposing, size. Their populations range from about 40,000 to nearly 350,000, the great majority having from 90,000 to 250,000 inhabitants.

"London" has various other meanings. This grows primarily out of the fact that differing areas are defined for special administrative services. A well-known example is the Metropolitan Police District, first established by the Metropolitan Police Act of 1839. It is not very different in extent from Greater London.

A general tendency exists for areas of English local government to grow larger. Past history has involved a development from the smaller to the larger community. At present, there are indications that combination and consolidation will be effected in increasingly greater degree. As is natural, strong local sentiment prevents rapid progress in this direction; but modern communication, desire for economy, and other considerations work in favor of larger units of local government. In the conditions of today, various combinations of existing areas for special purposes are not only possible but are, in practice, not infrequently employed. For example, counties and county boroughs

<sup>5</sup> Exclusive of the Inns of Court,—Inner and Middle Temples.

<sup>6</sup> See Harris, *London and Its Government* (London, 1933).

have been grouped by statute for some purposes of electricity supply on a wide scale. Moreover, a few areas of recent origin exist that have been formed without regard for present basic areas of local government.

*Sec. 3. Local Councils: Structure and Election*

The frequently encountered dictum that both central government and local government in England involve a negation of the doctrine of the separation of powers has reference primarily to the relationship between legislature and executive.<sup>7</sup> In a definite sense, there exists a fusion of the two branches. If this is in large measure true of the central government, it is a still more pronounced characteristic of the local units. Thus, although a substantial distinction may be made in local government between legislation and administration, the distinction is not markedly reflected in the structure of local agencies. For example, no local executive exists comparable to the American state governor or to the mayor of the mayor-council system of city government.

Recognition of the relative absence in England of distinction between local legislature and executive does not imply that the classification of local government agencies as legislative and executive is useless or devoid of meaning. At the same time, there exists an unusually great concentration of authority in the hands of one agency. That agency is the council.

The general rule is that each area of local government possesses a central organ, representative in character—its council. An exception occurs in connection with the rural parishes. These small areas have *meetings*, primary assemblies of all the voters in the area; but these parishes do not in all cases possess councils. The Local Government Act of 1933 continued in operation such parish councils as existed at the time of the passing of the act; and it defined the conditions for the further establishment of such councils, in the following terms:

If a rural parish has not a separate parish council, the county council shall by order establish a parish council for that parish—

<sup>7</sup> The independence of the judiciary is, of course, a well established phenomenon in England. Moreover, the English judiciary possesses so great a degree of unification that all the courts are essentially parts of one central system. Hence, the agencies of local government may be said not to include any of a judicial character.

- (a) if the population of the parish is three hundred or upwards; or
- (b) if, in the case of a parish having a population of two hundred or upwards but under three hundred, the parish meeting of the parish so resolve,

and the county council may, in the case of a parish having a population of less than two hundred, by order establish a parish council for that parish if the parish meeting so resolve.

{ In the result, there are approximately 7,200 parish councils among some 13,000 rural parishes.

*Size.* All councils in English local government display a unicameral structure. At the same time, the membership, though forming only one body, consists of more than one element. Councils of all areas are composed of at least two elements, councillors and chairmen. County councils and borough councils contain a third element, the aldermen. The chairman, known in boroughs as the mayor or lord mayor,<sup>8</sup> is a separate element of the council in the sense that his term of office is different from the term of other members of the council and that he may, though not necessarily, be chosen from outside the council, in which case he becomes an additional member of it. Aside from this possible variation by one, the size of the several councils is fixed.

The numbers of councillors prevailing in the several areas at the time of the passage of the Local Government Act of 1933 were continued in existence; but the act contained stipulations concerning changes in the size of the various kinds of councils. Thus, the size of county councils, determined originally by the County Councils Act of 1888, may now, according to the act of 1933, be altered, according to a stipulated procedure, by the Home Secretary. The size of the council of a borough is, in the beginning, determined by its charter. The act of 1933 stipulates that the number of borough councillors may, on certain conditions, be changed by order in council. In practice, there are usually three councillors for each ward of a borough. The number of members of urban and rural district councils and of parish councils may be altered by the council of the county in which the district or parish is located. No parish of three hundred or more inhabitants can

<sup>8</sup> This title is conferred by royal charter in the case of a few of the larger boroughs.

be left without a councillor in a rural district council; and a parish council cannot be composed of less than five or more than fifteen members.

The number of borough aldermen is determined by a simple provision of the Local Government Act of 1933: "The number of aldermen shall be one-third the whole number of councillors." The number of aldermen in a county council is determined by an almost identical provision. However, the possibility is anticipated that the whole number of councillors may not be divisible by three, in which case the number is to be "one-third of the highest number below that number which is divisible by three."<sup>9</sup>

In the result, much variation in the number of council members is to be found. The smallest county council contains 21 councillors and 7 aldermen. In two counties, there are more than a hundred councillors, the number of aldermen thus ranging between about 30 and 40. The majority of county councils consist of a number of councillors varying from 45 to 75, the corresponding limits in the case of aldermen being 15 and 25. In no two county councils is the number of councillors the same. The tendency is for the number to be a multiple of three, but many exceptions exist. The situation with respect to county borough councils is very similar to that in the counties. One county borough council contains 18 councillors and 6 aldermen; three contain slightly more than one hundred councillors and the corresponding number of aldermen. However, the limits in the number of councillors between which a majority of councils would be included is somewhat lower in the case of the county boroughs than in the case of the counties. Thus, about a third of the county borough councils contain between 20 and 30 councillors, and another third between 40 and 50. In the metropolitan boroughs, where, it will be remembered, the number of aldermen is one-sixth the number of councillors, only one council contains less than 30 councillors, and none more than 60. The variations in the case of the numerous municipal boroughs is naturally very great. The smallest council contains 6 councillors and 2 aldermen, the largest 42 councillors and 14 aldermen. At least one council contains councillors equal to every number between 9 and 30.

<sup>9</sup> The London County Council and the metropolitan borough councils are exceptions in this respect. The number of aldermen is one-sixth the number of councillors.



In this range, multiples of three are naturally more frequent than other numbers. About sixty councils contain 12 councillors and 4 aldermen, and more than fifty consist of 18 councillors and 6 aldermen. A majority of urban district councils contain from 15 to 20 members. A few contain less than 15, a somewhat larger number between 20 and 30, and a few more than 30. A majority of rural district councils consist of between 20 and 40 members. A few contain less than 20, a somewhat larger number between 40 and 50, and a few more than 50. Judged by American standards, all these bodies are relatively large.

*Incorporation.* The Local Government Act of 1933 contains the following provision: "The county council shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to hold land for the purposes of their constitution . . ." Identical provisions are included with respect to urban and rural district councils and parish councils. Thus, in these cases, the councils are as such legal corporations. On the other hand, the borough council is not itself a corporation but is the agent of a corporation. This is made clear by the following stipulations of the act of 1933:

The municipal corporation of a borough shall be capable of acting by the council of the borough and shall—

- (a) in the case of a borough being a city, the mayor of which is entitled to bear the title of lord mayor, bear the name of the lord mayor, aldermen and citizens of the city;
- (b) in the case of any other borough being a city, bear the name of the mayor, aldermen and citizens of the city; and
- (c) in the case of any other borough, bear the name of the mayor, aldermen and burgesses of the borough.

. . . The municipal corporation of a borough shall have power to hold land for the purposes of their constitution.

*Terms of members.* In English local government, there are different terms of office for the several elements of which councils are composed. According to the stipulations of the Local Government Act of 1933, the term of councillors is three years, of aldermen six years, and of mayors or chairmen one year.



*Renewal.* The councillors of county councils are normally chosen all at one time. The same is true of parish councillors. On the other hand, borough councillors are always, and urban and rural district councillors are usually, renewed one-third at a time, annual choice thus being the rule. However, the county council possesses the power to provide, on application, for the integral renewal of district councillors. Aldermen in the counties and boroughs are chosen one-half every three years.

*Election.* Councillors are in all cases elected by the local government voters. Aldermen are chosen by the councillors. Mayors and chairmen are chosen by the councils over which they are to preside, the Local Government Act of 1933 stipulating, in the case of aldermen, that "an alderman may not, as such, vote at the election," and, in the case of mayors and county chairmen, that "an outgoing alderman shall not, as alderman, vote." County councillors are elected early in March. The council may choose any date between the first and eighth of the month; but, if it takes no action, the eighth becomes the day fixed. Borough councillors are elected on November 1st. The terms of district and parish councillors begin on April 15th. The Home Secretary decides, or authorizes the county council to decide, upon the date of election; but rural district elections and parish elections within the district must, so far as possible, take place on the same day. Mayors and chairmen are chosen at the annual meeting of the councils involved, the Local Government Act of 1933 stipulating that their choice shall be the first business transacted. In the years in which aldermen are to be elected in the counties and boroughs, they are chosen at the annual meeting, after the choice of presiding officer for the year.

*Eligibility to councils.* The principles determining the eligibility of members of the various kinds of councils are in all cases the same. They are incorporated in a section of the Local Government Act of 1933, which provides that a person to be eligible must be a British subject of full age, and either a local government elector for the area concerned, or a freeholder or leaseholder therein, or a resident therein for a year preceding the election.<sup>10</sup> The disqualifications for office are somewhat less simple and uniform. In general, eligibility does not extend to persons holding paid office under the councils, to bankrupts,

<sup>10</sup> Women and men are, in these matters, on a plane of equality.

to persons on poor relief, and to persons convicted of certain crimes, including violations of legal provisions regulating corrupt and illegal practices in elections.

*The right to vote.* Concerning the electorate involved in the choice of the councillors of the several councils, identical provisions are contained in the Local Government Act of 1933:

The persons entitled to vote at an election . . . shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.

The provisions in question are as follows: <sup>11</sup>

A person shall be entitled to be registered as a local government elector for a local government electoral area if he or she is of full age and not subject to any legal incapacity, and—

- (a) is on the last day of the qualifying period occupying as owner or tenant any land or premises in that area; and
- (b) has during the whole of the qualifying period so occupied any land or premises in that area, or, if that area is not an administrative county or county borough, in any administrative county or county borough in which the area is wholly or partly situate; or
- (c) is the husband or wife of a person entitled to be so registered in respect of premises in which both the person so entitled and the husband or wife, as the case may be, reside . . .

The principle involved in these provisions is often said to incorporate the belief that a person, in order to have a voice in local affairs, ought to have a "stake" in the community. Among people, otherwise qualified, who are not included in the local electorate are adult children living with their parents, lodgers who live in furnished lodgings, and domestic servants who "live in." Some persons, such as lunatics and felons, are, even if in all positive respects qualified, not entitled to vote. Peers, who may not vote in parliamentary elections, may, if qualified, vote in local elections.

In general, registration is a necessary prerequisite for voting. A register, which is distinct from the parliamentary register, is kept. It is revised annually. Inasmuch as the registration officials are responsible for the preparation of the register, a qualified voter, in order

<sup>11</sup> Representation of the People (Equal Franchise) Act, 1928, 18 & 19 Geo. 5, c. 12, s. 2.

to have his name placed or retained on the register, is normally under no necessity of taking any initiative.

The following table will give some indication of the extent of the local suffrage :

TABLE 4

## LOCAL GOVERNMENT VOTERS (1936 REGISTER) \*

[Estimated population (1936): 40,839,000; Parliamentary voters (1936 Register): 27,395,836.]

<i>District</i>	<i>Total</i>	<i>Males</i>	<i>Females</i>
England and Wales .....	20,712,367	9,770,974	10,941,393
County Boroughs .....	6,663,027	3,101,367	3,561,660
Administrative Counties ....	14,049,340	6,669,607	7,379,733
Municipal Boroughs and			
Urban Districts § .....	10,284,318	4,827,471	5,456,847
Rural Districts .....	3,765,022	1,842,136	1,922,886

\* From *The Registrar-General's Review of England and Wales for the Year 1936: Tables, Part II. Civil* (London, 1938).

§ Including the City of London and the Metropolitan Boroughs.

*Election districts.* Councillors are, as a general rule, elected in single-member constituencies. This is true whether renewal is partial or integral. In the first case, the constituency, for example the ward, though usually allotted three members, elects one at a time. In the case of integral renewal, the counties are the best example. For these, the 1933 act stipulates that each county shall be divided into electoral divisions each returning one councillor. In the case of urban and rural districts and parishes, the county council possesses considerable power with respect to the arrangement of constituencies. In the absence of such arrangement, all councillors are elected from the parishes in a rural district and from the area as a whole in the case of urban districts and parishes. This latter situation prevails with respect to the majority of parish councils. Members of these councils, it may be recalled, are normally elected in the parish meetings by a show of hands. However, the act of 1933 authorizes the county council, on the request of a parish council or meeting, to provide for an ordinary election of parish councillors.

The details of procedure in the conduct of local elections in England are, in general, the same as those in national elections. These details, in the former case, are, in large measure, regulated by the Local Gov-

ernment Act of 1933. In addition to a number of miscellaneous provisions in the body of the act, a long second schedule, consisting of more than twenty pages in fine print, regulates the conduct of various activities in connection with county and borough elections. A similar code, which follows very closely the provisions of this schedule, is issued by the Home Office for district and parish elections.

*Nomination of candidates.* Part I of the second schedule of the Local Government Act of 1933 contains provisions relating to the stages of local elections preceding the poll. These earlier stages are connected with *nomination*. Notice of elections must be given by the designated authorities, the returning authority in the county and the town clerk in boroughs. Nomination is made by a mover and seconder and eight supporters, papers of a special form being required. These papers must be submitted at the time and place, and to the authorities, specified in the detailed provisions of the schedule. If the nomination of only one candidate is made for an office to be filled, there is said to be an "uncontested election" and the single candidate is said to be "returned unopposed." If two or more candidates are nominated for an office, a "poll" becomes necessary; in other words, the election of one of the candidates is made.

Part III of the second schedule of the act of 1933 contains detailed provisions relating to the actual election in local government. These provisions regulate such matters as notification of the poll, hours of the poll, the use of public buildings, the providing of ballot boxes and ballots, appointment of presiding officers, the presence at the poll of agents representing the candidates, the questioning of electors, the counting of votes, and so on. The ballot used in local elections, a form of which is given in Part IV of the schedule, is a simple "short ballot," containing in alphabetical order and in capital letters the last names of the candidates, to which are added in smaller characters the first names, the addresses, and the occupations of the candidates.

*Corrupt and illegal practices.* Several acts of Parliament contain provisions calculated to secure fair elections in local areas. In general, the provisions are similar to those that apply to national elections. Some provisions deal with what are called "corrupt" practices. These practices involve activities commonly regarded as wrong in themselves, such as bribery and intimidation. Other provisions relate to "illegal"

practices, that is, practices that are "prohibited," though not in themselves wrong. Such provisions regulate the amount that may be spent by a candidate in borough elections, the expenditure that may be undertaken in all elections for things like agents and committee rooms, the use of hired vehicles for bringing voters to the polls, the identification of the printer and publisher of election posters and other literature, and so on. Disputed elections are decided impartially by the law courts.

*Interest in elections.* In general, local elections do not appear to arouse much interest in England. This may be an indication of satisfaction with the way local affairs are being conducted, but it is more likely to be a sign of inertia and apathy. At times, all the members of a council are returned unopposed, and there are even occasions when no candidate at all is put forward for nomination, in which case the Local Government Act of 1933 stipulates that the retiring councillor or councillors "shall be deemed to be elected." Such eventualities are, apparently, less likely, though by no means unknown, in urban communities than in rural areas. In general, interest appears to increase, though there are numbers of exceptions, from parish to rural district, from rural district to county, from county to urban district, from urban district to borough, and from borough to county borough. Moreover, likewise with exceptions, such variations in interest tend to correspond with variations in party activities. As a rule, where local elections are held on lines similar to a national election, interest is greater. In such cases, the Labor Party appears to expend more energy than the older parties.<sup>12</sup> What are sometimes called "independent" elections also occur. Here, candidates stand for election without affiliation with other candidates and, at times, without affiliation with any organization. Independent candidates are often to be distinguished as in reality opposed to the extension of socialism in local government; and, where they are supported by an organization, it is allegedly an organization of taxpayers, of persons devoted to economy, or something of the kind.

When contested elections are held, rarely more than half the quali-

<sup>12</sup> These parties, unlike the Labor Party, normally participate in local elections under names different from those employed in national affairs, the Liberals being known as Progressives, the Conservatives as Municipal Reformers.

fied voters trouble to go to the polls. Sometimes as few as a third, or even less, take part in the balloting.

Members of councils are, apparently, of greatly varied types. Generalization appears to be next to impossible. Women are being elected in increasing number in urban communities, but are still very rare in county and rural district councils. Working men, likewise, tend to be elected in larger numbers to councils of urban areas. There are, also, usually a few in the county councils, where, together with business men, they generally represent urban communities. Farmers are found fairly frequently in county councils, and merchants and shopkeepers in borough councils. Other classes include doctors, lawyers, ministers of religion, former schoolmasters, and retired army officers.

#### *Sec. 4. Council Organization*

*Meetings.* The time of meeting of local councils in England is regulated by a long third schedule of the Local Government Act of 1933. For example, with respect to urban and rural districts, stipulations require that the councils "shall, in every year, hold an annual meeting and at least three other meetings for the transaction of general business." The requirements are the same for county councils and borough councils except for a provision which requires that the three meetings other than the annual meeting "shall be as near as may be at regular intervals." Parish councils are likewise required to meet the same four times; whereas a parish meeting must assemble once and, in the case of parishes with no council, an additional time. In every variety of area, the presiding officer—mayor or chairman—"may call a meeting of the council at any time." If a specified number of members requests such a meeting and the presiding officer fails to comply, the same number may, after a specified number of days, call a meeting. In practice, county councils do not often hold special meetings; but, in recent years, so many powers have been devolved upon the councils that they not infrequently adjourn their regular meetings to meet for additional sessions.

*Rules.* The organization and proceedings of local councils are in some measure regulated by statutory provisions, more especially by those contained in the Local Government Act of 1933. Otherwise, such matters are determined by the standing orders, which may be freely

made by the councils themselves, so long as they do not violate stipulations of statute or common law. By virtue of this authority, some councils in practice frame elaborate codes of orders extending to several hundred articles. Others find that they can get on satisfactorily with twenty-five or fifty simple rules. With a view to encouraging greater uniformity, the Ministry of Health has formulated and issued a model code of standing orders. As may readily be imagined, written rules are everywhere supplemented with precedents and customs.

*Officers.* In accordance with general principle, the standing orders of local councils in England are applied by the presiding officer. This officer, as has been seen, is, in the case of all councils other than borough councils, the chairman.<sup>13</sup> In borough councils, the presiding officer has been seen to be the mayor or lord mayor, chosen, as in the case of a chairman, for one year by the council from among its members or from outside. In practice, the position of presiding officer goes, with relatively few exceptions, to a member of the council. It tends to be regarded as a reward for faithful service. Moreover, though the law provides for indefinite reëligibility, rotation prevails in practice. Reëlection is the exception rather than the rule. This situation is apparently to be explained partly by a desire not to continue in office a man who might later have to be abandoned for having lost interest in the position and partly by the fact that the position of chairman or mayor is usually a serious drain on the personal resources of the incumbent. Salaries may be paid to county chairmen and to mayors, and, in all cases, allowances may be made for expenses; but, in practice, this does not cover what is expected to be expended. A few women have held the position of chairman or mayor and, it is said, have usually tended to raise the average of ability.

Chairmen and mayors, in addition to presiding at meetings and applying the standing orders, have the power, as has been seen, of calling special council meetings. They are members of all committees of the council; and, in the deliberations of the council, they possess a deciding vote.

Councils that elect chairmen also elect vice-chairmen. A vice-chairman must be elected from within the council, and he holds office until the next chairman is chosen. In general, he has the same position as

<sup>13</sup> The presiding officer in parish meetings is also the chairman.



the chairman. In the boroughs, the mayor appoints a councillor or an alderman to be deputy mayor. The deputy mayor cannot be called to the chair except by an express vote of the council; but, otherwise, his position, as presiding officer, is the same as that of the mayor.

The principal non-member officer of councils is the clerk, who is appointed by the council. In this respect, he is not to be distinguished from other typical local officials. Indeed, all such officials are, in this sense, officials of the council.<sup>14</sup> However, most of them cannot be said to be agents of internal council organization. All councils, with the exception of parish councils, are required by law to have clerks. Borough and county councils must remunerate their clerks. District councils are authorized to do so; and, in practice, they normally do. As a matter of fact, clerks are generally lawyers. Coming into contact as they do with all the varied activities of local government, they acquire an intimate knowledge of local affairs that renders them in peculiar degree the key agent of local government. A parish council may dispense with a clerk; it may appoint one of its own members clerk without remuneration; or it may appoint from outside a suitable person, who may be remunerated.

*Committees.* English local councils, in common with clubs, corporations, societies, and nearly every kind of numerous and relatively important body, make extensive use of committees. Indeed, in English local government, the principal part of the work of councils is accomplished through committees. The small council of a small parish may be able to get on without any committees; but, otherwise, nearly all councils have at least some committees, and many of them have a large number. These committees are in some cases set up with a view to dealing with various aspects of one question and in others to dealing with a particular aspect of a number of questions. In the case of some of the more important committees of the more important areas, the committees are at times divided into subcommittees. An important Royal Commission on Local Government, in its Final Report of 1929,<sup>15</sup> commented on the evidence that committees were being constantly increased in number; but it did not feel inclined to

<sup>14</sup> In boroughs, they are, technically, officials of the corporation; but the difference is of no practical concern.

<sup>15</sup> It was the third and *Final Report of the Royal Commission on Local Government*, Cmd. 3436 (1929).



make recommendations in respect to a matter so largely depending on the discretion of the councils.

The Local Government Act of 1933 recognizes the power of councils to appoint committees and to delegate extensive powers to them. Committees of this kind are commonly known as *standing* committees, and are to be distinguished from obligatory committees that are made mandatory by law, commonly known as *statutory* committees.

Statutory committees are most numerous in connection with the counties. The councils of these areas are, by several different Parliamentary enactments, required to establish about a dozen such committees. Examples are the Standing Joint Committee and the committees on Finance, on Education, on Public Health and Housing, and on Maternity and Child Welfare. Boroughs are likewise obliged by statute to create, though in smaller number, certain committees. Examples are the Watch Committee and the committees on Education and on Maternity and Child Welfare, and, in the case of county boroughs, the Committee on Public Assistance.

The wide discretion of councils in determining the number of standing committees is matched by extensive freedom in the matter of determining their size, term of office, and the area in which they are to operate. In practice, some committee members, according to a principle similar to that by which aldermen, mayors, and chairmen may be chosen from outside the councils, have been and are regularly "coöpted," that is to say, taken from persons not having membership in the council who are regarded as possessing especial fitness. Since such persons become full members of the committees and since committees do so much of the work of councils as to be largely autonomous, coöpted committee members become in effect members of the council. This practice is apparently not seriously challenged. Indeed, it has even been said to be a possible salvation of democracy. At the same time, in the Final Report of 1929, the Royal Commission on Local Government recognized that, as was suggested to the commission by associations of local authorities, the practice might be pushed too far. It recommended a limitation, subsequently adopted, that "coöpted" members should not exceed one-third of the membership of a committee. In the case of statutory committees, coöpted members are also

frequently employed, being in some cases required by law. In general, the composition of such committees is determined by the council within the limits determined by law. Thus, in connection with the primary function of police,<sup>16</sup> the composition of the exceptionally important Standing Joint Committee in the administrative counties and Watch Committee in the boroughs is determined by act of Parliament. The Standing Joint Committee consists of an equal number of members of the county council and of justices of the peace.<sup>17</sup> The Watch Committee, according to statutory provision, consists of not more than one-third the members of the borough council.

Part III of the Local Government Act of 1933 is concerned with committees and joint committees. The standing and statutory committees that have just been considered fall within the first category of this dual classification. Joint committees are likewise to be subdivided into those that are standing and those that are statutory.<sup>18</sup> In general, similar principles apply to the creation and composition of joint committees as to ordinary committees. This is apparent in the following provisions of the Local Government Act of 1933:

A local authority may concur with any one or more other local authorities in appointing from amongst their respective members a joint committee of those authorities for any purpose in which they are jointly interested . . .

Provided that, where a local authority concur in appointing a joint committee for the discharge of any functions which under any enactment the authority are authorized or required to discharge through a committee appointed under that enactment, and that enactment contains any special provisions with respect to the constitution and functions of that committee (including any provisions with respect to the appointment of persons who are not members of the local authority), those provisions shall apply to the constitution and functions of the joint committee with such modifications, if any, as the case may require.

<sup>16</sup> Cf. p. 84, *infra*.

<sup>17</sup> As a matter of fact, this committee in a definite sense possesses an exceptional position among committees. It possesses by law a financial authority that is beyond the reach of the council and its finance committee. The Watch Committee has what is practically an equally great autonomy.

<sup>18</sup> Some confusion might result from terminology. For example, the highly important Standing Joint Committee of the counties is neither a standing committee nor a joint committee.

Subject to the provisions of this section, the number of members of a joint committee appointed under this section, the term of office of the members thereof, and the area, if any, within which the joint committee is to exercise its authority, shall be fixed by the appointing authorities.

### *Sec. 5. Local Officials*

Aside from the activities of councils and of their committees, the affairs of local government in England are the concern of a group of paid officials. Parishes, it is true, may get on without such officials or may reduce the staff to a part-time clerk; small urban and rural districts may manage with only a few officials, sometimes with less than ten; but important areas require a large corps for the management of their local affairs. This employment of paid local officials is, it may be noted, a modern development. The general practice dates from late in the nineteenth century. Before that time, the old English tradition prevailed that every citizen must recognize service to the community as a duty. With changes in conditions, especially in the eighteenth century as a result of the Industrial Revolution, need for administration more continuous than was possible in the leisure of part-time officials, and recognition of the importance of knowledge more technical than could be secured through voluntary service, gave rise to permanent employment of local officers.

A few local officials are required by statute. Most of these are mentioned in the Local Government Act of 1933.<sup>19</sup> Part IV, devoted to officers, contains provisions in this respect that apply to the several areas of local government. Thus, the county is required to have several specific officers. The first mentioned after the clerk is the treasurer. Every county council is to appoint a fit person to be the county treasurer, to pay him what it deems reasonable, and to keep him in office during its own pleasure. In the next place, the act requires a county officer of health. He is to be a person with medical training; he is to hold office at the discretion of the council, and is not to engage in the private practice of medicine; but he may not be removed without the consent of the Minister of Health. In the next place, a county surveyor

<sup>19</sup> In the case of counties and county boroughs, the Ministry of Health is authorized by statute to require certain officials to be employed in connection with the poor law.

is made obligatory; while the council may at its pleasure appoint such other officers as it deems necessary.

So far as the legal minimum of borough officers is concerned, the Local Government Act of 1933 lists them in one simple provision:

The council of every borough shall appoint fit persons to be town clerk, treasurer, surveyor, medical officer of health and sanitary inspector or inspectors, and shall also appoint such other officers as the council think necessary for the efficient discharge of the functions of the council.

There are corresponding provisions for urban and rural district councils, but rural districts need not appoint a surveyor, and may appoint more than one medical officer of health. In the case of parishes, where, as has been seen, even the clerk is not mandatory, the act of 1933 mentions only one other officer,—the treasurer, who may be appointed from within or without the council, but who cannot be remunerated.

Taken as a whole, persons who are employed in the work of local government in England and Wales number nearly a million. They may be classified in various ways. A large number—about 65,000—consist of police agents. A somewhat smaller group—in the neighborhood of 50,000—consists of poor-law officers. There are about a quarter of a million school teachers. The remainder are employed either in connection with enterprises like water works, gas works, electric plants, bus and street car services, and so on, or in connection with more direct and typical governmental activities. In either case, manual workers, sometimes referred to as servants of local government in contradistinction to officers of local government, are estimated to stand in a ratio of four to one to clerical workers.

Servants of local government are characterized by the simple formal fact that they receive wages, that is to say, compensation reckoned on a weekly basis. A more distinguishing characteristic is the fact that such employees, aside from being in government employ, do not differ from corresponding workers in private enterprise. This is especially apparent when an activity of local government is effected through arrangements with a contractor. However, even where such arrangements are not made, the position of laborers, for example, does not essentially differ from what it would be if such workers were employed in ordinary industry. Thus, such considerations as labor unions,

collective bargaining, prevailing wages, and the like are important factors in both cases. What is true of manual workers is, in general, true of certain kinds of office workers as well.

The officers of local government number something more than 100,000. They are the most typical administrative agents of local government; and, in spite of genuine differences, they correspond to the civil servants of the central government. They are, by contrast, sometimes referred to as the "municipal civil service" or the "local service." Though much variation is to be found, they fall, in general, into two subdivisions. The first is a professional or technical class. The second is administrative and clerical.

The group of professional and technical officials of English local government forms the highest and smallest class of the local service. In it are the chiefs and assistant chiefs who direct the more typical activities<sup>20</sup> of the local units. These officials are, thus, normally men of professional and technical training who are in administrative positions. They may begin their careers in the local service at almost any age; but they normally enter while still young. Transference from one locality to another is common.

The employment of professional men like doctors, lawyers, and engineers as chief administrators represents a marked difference between the local service and the civil service. Moreover, this difference is commonly regarded as a mark of inferiority of the local service. This judgment is based partly on the assumption that persons of broad general education usually make better administrators than do specialists of the kind that professional men generally are. However that may be, the possession of administrative ability by professional men is frequently said by English students of local administration not to display itself very often. On the other hand, in the civil service, the men of outstanding ability who rise to the top are, as is well known, normally persons of broad education, recruited from the universities. Such university honor graduates are rarely attracted into the local service. From the nature of the case, persons of only general education, no matter how excellent, are without the technical training possessed by men who have entered the professions. Moreover, the same lack of training is normally characteristic of agents in the lower

<sup>20</sup> Cf. pp. 83-85, 97-99, *infra*.

ranks of the local service; and this renders extremely difficult promotion from these ranks into the highest class. Attention is apparently being given to arrangements whereby persons in the local service may secure professional training; but the results do not yet appear to be far-reaching.

The local staffs of administrative and clerical employees carry on the daily business of local administration. The general qualification that is desirable in most cases has been said to consist of ability to perform various writing tasks with fair speed and tolerable accuracy.<sup>21</sup> The tasks involved include taking minutes, making abstracts, conducting correspondence, and so on. The agents concerned generally enter the local service in their teens, soon after leaving school.

*Recruitment.* Recruiting of the local service in England, while displaying some tendencies in the direction of uniformity, is marked rather by lack of it. The local service, therefore, is again in this respect to be contrasted with the national civil service. The various councils decide on their own methods of recruitment. Open competitive examinations are employed only exceptionally, their general use being confined to some fifty very large communities. The usual practice is choice after personal consultation. This method is manifestly one that might lend itself to abuse; but the general situation seems in practice to be relatively good. Though there are inevitably some exceptions, the local service is fundamentally imbued with somewhat the same spirit as the civil service. The worst features of the "spoils system" are almost wholly absent. On the other hand, no claim is made that improvement is not possible. In 1930, a committee, known from its chairman as the Hadow Committee, was set up in the Ministry of Health for the purpose of studying recruitment and related subjects in connection with the local service. Its inquiry, after being suspended, because of the depression, for a period of eighteen months, in the end resulted in a full report in 1934, known as the Hadow Report.<sup>22</sup>

The situation with respect to the recruitment of professional and technical officers appears to be, on the whole, satisfactory. The Hadow Report confined itself to enunciating the principle that, in the matter

<sup>21</sup> *Finer, English Local Government* (New York, 1934), p. 256.

<sup>22</sup> *Ministry of Health, Report to the Minister of Health by the Departmental Committee on Qualifications, Recruitment, Training and Promotion of Local Government Officers*, 32-306 (1934).

of these officials, the best qualified man or woman should be selected, whether from within or without the service. Various scientific organizations guarantee in advance the competence of those chosen by the councils. This guaranty is effected through certificates and through such examining bodies as the Law Society, Royal Sanitary Institute, Chemical Society, Medical Schools, Institute of Civil Engineers, Institute of Chartered Accountants, and various others. The integrity and impartiality of these bodies are regarded as being beyond suspicion.

It is with respect to officials of the administrative and clerical staffs that lack of uniformity is most pronounced. There seems to be little doubt but that some improvement is possible. At the same time, such considerations as the wide differences in size in respect of the various localities represent a limit to what can be accomplished. The Hadow Report recommended that officials of this class should be required to possess the "school certificate" and that they should not be recruited before the age of sixteen. The school certificate is normally awarded at this age, upon completion of the course in a secondary school. The report strongly urged these minimum requirements even for rural communities. In practice, officials are frequently recruited at the age of fourteen without any kind of examination. Likewise, recruitment at the age of fifteen on the basis of a school testimonial is very prevalent. In only a comparatively few cases are the minima of the Hadow Report required in practice. As for higher requirements, advanced work beyond the school certificate is encouraged only by an extremely small number of councils, notably by the London County Council. The Hadow Report suggested that the preliminary age and certificate requirements ought to be supplemented by a special entrance examination, which might be devised along the lines of the diplomas in public administration granted by such universities as those of London, Leeds, Liverpool, Manchester, and Sheffield. This recommendation was urged in spite of the fact that the committee heard considerable evidence which not only expressed a preference for personal interview but also criticized written examinations. Partly with the smaller areas in mind, the report proposed that each council should set up an establishment committee, with the function of dealing with matters of qualifications, recruitment, training, and promotion of officers; that local councils might in proper cases combine, with a

view to coöperating, more especially in respect to examinations; and that a central advisory committee might be established, with such functions as suggesting desirable coöperation through regional examinations and furthering profitable discussion with educational agencies. In the last-mentioned respect, it is worth noting that a large part of the impetus for improvement in the local service comes not from the outside but from within the ranks of local officers. These officers have for some time been organized into various associations, which, in turn, have, since early in the present century, been in effect federated into the National Association of Local Government Officers, commonly known from its initials as *Nalgo*. It has a membership of something like 75,000, and is thoroughly organized locally, regionally, and nationally. It has for some time urged improvements along the lines of those recommended in the Hadow Report, and is regarded as having been the principal single force in securing the high standards of the local service.

*Tenure.* Tenure of local government officers in England is secure. This situation was given legal foundation in the Local Government Act of 1933. A provision of that act was the result of a judicial decision of 1929 and of a recommendation of the report of the royal commission of the same year. In 1929, the High Court of Justice, in the case of *Brown vs. Dagenham Urban District Council* (1929, 1 K. B. 737), upheld the right of a Council to dismiss without notice officers appointed under contracts requiring in terms a specific notice.<sup>23</sup> The right being statutory, no contract, it was held, could affect it. As a result, contracts of the kind throughout the country were rendered worthless. To remedy this situation, the recommendation of the royal commission was incorporated into the following provision of the act of 1933:

Notwithstanding any provision in this Act or any other enactment that a person holding any office shall hold the office during the pleasure of a local authority, there may be included in the terms on which he holds the office a provision that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed, and where, at the commencement of this Act, an officer

<sup>23</sup> An exception was recognized in the case of officers appointed subject to approval by the central government.



of a local authority holds office upon terms which purport to include such a provision, that provision shall, as from the commencement of this Act, be deemed to be valid.

*Salaries.* Variations from place to place with respect to the local service extend to salaries as well as to other things. Remuneration is determined by the councils, and little uniformity prevails. The establishment of a national salary scale has for a long time been recommended by *Nalgo*; it recently has been encouraged by the Ministry of Health; and it was strongly urged in 1934 in the Hadow Report. In practice, some advance has been made, especially in the north of England. In general, the problem is tackled first by communities that employ large staffs of officers. Gradual extension is almost certain to be effected. However, those who scrutinize the work of local government in the interest of economy interpose much opposition. Ratepayers' associations pass resolutions of protest; and, in small communities, the matter of the salaries of officials forms a natural and simple issue for agitation and controversy.

*Retirement.* The retirement of local officials on pension has been regulated for the most part by an act of 1922. Before that time, some larger communities had their own schemes; and, in the case of certain classes of officials such as police and teachers, national arrangements existed. The act of 1922 was not compulsory. It merely empowered the adoption of pension schemes that involved as many as fifty officers. Small communities received consideration through provisions allowing combination. The pension plan, the details of which are somewhat complicated, involved joint contributions on the part of the officials<sup>24</sup> and councils. In the Ministry of Health, a departmental committee on superannuation recommended that the act of 1922 be made compulsory. The Hadow Report repeated the recommendation. A bill incorporating provisions to that effect was introduced into Parliament; and it became law<sup>25</sup> in July, 1937.

Except in the very small communities, agents of local government are organized into various departments. Considerable similarity displays itself in this respect from community to community. Certain differences also naturally exist. In the one case as in the other, the

<sup>24</sup> The plan also included local servants, paid a weekly wage.

<sup>25</sup> Local Government Superannuation Act, 1937. (1 Edw. 8 & 1 Geo. 6, c. 68.)

matter is largely determined by the activities that local government undertakes.<sup>26</sup> In other words, it is primarily a question of function.

### *Sec. 6. The Functions of the Councils*

The activities of local government are highly varied. At the same time, they are in all cases activities that are undertaken by agents and organs of government. In other words, all the activities of local government, however much abstraction may be introduced into thinking and speaking about them, involve activities on the part of one or more human individuals. On the other hand, not all the activities, of course, of such individuals are governmental functions, but only those that they perform in their capacity as agents of government.

Several classifications of the functions of local government may be employed. In England, it is common to think and speak of the services provided by government. In this respect, a simple and convenient, though not an absolute, distinction is made between services provided directly for the people and those provided only indirectly. The second kind of service involves what are sometimes called in this country *staff or overhead functions*, the first kind *line functions*.

Consideration of such governmental activities as are, in general, *means* towards the providing of direct services to the people involves, again in general, activities of governmental agents and organs viewed in their distributive, as distinguished from their collective, capacity. Government as a whole or, in other words, agents and organs of government taken collectively, are felt to provide services directly to the people. On the other hand, means to such ends, for example, making regulations, framing budgets, appointing officials, and the like, are associated more naturally with specific agencies. Hence, the most convenient way of considering the staff functions of local government in England would seem to be that of examining successively the typical activities of councils and of local officers.

If the position of local assemblies be approximated to that of national legislatures, council activities may be roughly classified in the same way. This, according to prevailing practice, involves three general activities. They are law making, administration of finance, and control of the executive.

<sup>26</sup> Cf. pp. 80-85, *infra*.

*Local legislation.* The idea that local communities make law seems in no way to offend English sensibilities. In this respect, England is, on the whole, to be contrasted with a centralized country like France. All local government, it is true, is not infrequently spoken of in England, as in France, as *administration*. However, in England, this appears to be merely a recognition of the relative nature of the distinction between legislation and administration and a recognition that local government is, in its broadest aspect, merely one means of getting the governmental work of the whole country done. In more restricted perspective, local activities, however much those of an administrative character tend to predominate, are recognized to include the establishment at times of imperative rules of a statutory character; and, in most quarters, there is no objection to considering these rules to be law and their making to be legislation.

The highest form of legislative activity on the part of a local council is the passage of a *by-law*. Other local legislative enactments are known technically as *regulations*. They do not differ from by-laws except in name.

By-laws may be made by any council within the limits of its authority. In practice, they are generally made in sets, each community<sup>27</sup> being possessed of a dozen or more small codes, as it were, respectively regulating as many kinds of subjects. The making of some by-laws is mandatory; but usually the council is free to pass or not to pass these local laws, as it sees fit. Perhaps the most typical by-laws are those that are made by county councils and borough councils. The general grant of authority in the case of these councils is now contained in the following provision of the Local Government Act of 1933, which uses the spelling "byelaw" instead of the usual "by-law."

A county council and the council of a borough may make byelaws for the good rule and government of the whole or any part of the county or borough, as the case may be, and for the prevention and suppression of nuisances therein:

Provided that byelaws made under this section by a county council shall not have effect in any borough.

<sup>27</sup> This is less true of the parishes, which, while making by-laws, naturally do so on a smaller scale than other communities.

A by-law or regulation is passed in a manner that resembles in a general way the legislative process everywhere. Where agreement exists that addition to or modification of the body of law is desirable, a potential legal enactment is formulated in writing. Enactment, or in other words passage, involves a procedure, through certain stages, in the course of which a proposed measure receives the consideration and assumes the form that are considered worthy of regulations intended to be binding on human beings.

*Proposal of by-laws.* Owing to the relatively small difference between the legislature and the executive in English local government, or, in a more practical sense, owing to the large part played by committees, all the business of a council tends to be business sponsored by those who supervise its execution. Thus, whatever may be in a literal sense the source of a proposal adopted by a council, the proposal is in a definite sense a committee measure. For example, a by-law which is reported favorably by a committee is for all practical purposes an executive proposal. Moreover, this is altogether likely to be true in a somewhat more definite sense. A permanent official in many cases suggests to a committee that a measure is necessary or desirable. Often his influence is such that the committee decides to propose the measure. The important thing is that a responsible agency has made the proposal its own. The council in a given case may be inclined readily to trust the conclusions of a committee; and its approval of a committee proposal may amount to little more than formal acceptance. Indeed, it is sometimes said that more than nine-tenths of a council's business is dispatched in this way. As a result, the fact that the council appears to do what the committee says and the committee what the official suggests sometimes causes doubt to be cast upon the practical importance of everything but the official's decision. If he is competent, the rest, it is suggested, is largely irrelevant. This, however, loses sight, at least from a democratic point of view, of an important consideration. As has been well said, "it must always be remembered that if an institution of control does not in practice busily operate, control is still exercised by the mere fact of its existence."<sup>28</sup>

*Enactment of by-laws.* Formal proceedings of a council are conducted in accordance with the general practices involved in parlia-

<sup>28</sup> Finer, *op. cit.*, p. 224.

mentary procedure. Legally, meetings must be regulated in accordance with statutory provisions, as supplemented by standing orders.<sup>29</sup> In theory, if these provisions are insufficient, those of the common law are applied. In practice, especially in matters of detail, the tradition of the council itself is followed. This means that things like the requirement of a quorum, the employment of notice and motion, the orderly conduct of debate, and the taking and recording of final votes or divisions, are determined in a regular and understood way, not in a haphazard manner.

The vote of a council on a proposed by-law cannot be subsequently affected by any local agency except the council itself. If the vote is unfavorable, later passage is dependent upon a change of mind on the part of the council. If the vote is favorable, no delay, reconsideration, modification, or repeal can be effected except by an analogous change of mind. In these respects, it will be noted, the English situation is to be contrasted with that existing in certain American communities. Thus, in England, there is no popular initiative. In the matter here being considered,<sup>30</sup> no popular referendum exists. Moreover, no "veto" by a local executive is employed, such as that associated with the office of mayor in this country. On the other hand, so far as the central government, as distinguished from local government, is concerned, passage of a by-law by a local council is not final.

*Central approval of by-laws.* The matter of the relationship between local government and central government will be considered later; but one or two considerations may be mentioned at this point. Any individual who is affected may attempt to prove in a court of law that a council, in undertaking to pass a by-law, exceeded its authority; and, if the court agrees, the action of the council will be considered null and void. Moreover, the central executive may, on certain conditions, intervene either on legal grounds or on grounds of policy. Several central departments may in this respect be involved. Thus, the Board of Education must confirm by-laws that regulate school attendance and other matters of the kind; the Ministry of Transport and the Ministry of Agriculture are the confirming agencies for by-laws authorized by

<sup>29</sup> Cf. pp. 22-23, 35-36, *supra*, and 104, *infra*.

<sup>30</sup> A kind of local referendum may at times be employed in connection with local acts of Parliament. Cf. p. 69, *infra*.

statute within the respective spheres of these departments; the Home Office must confirm most by-laws for "the good rule and government" of counties and boroughs; and the Ministry of Health is the authority that must confirm all by-laws of a sanitary and related character. Of these departments, the Home Office and the Ministry of Health are, with respect to local government, the most important. The general situation is now defined in a provision of the Local Government Act of 1933:

The confirming authority in relation to byelaws made under this section shall be the Secretary of State, except that as respects byelaws relating to public health or to any other matter which, in the opinion of the Secretary of State and of the Minister, concerns the functions of the Minister rather than those of the Secretary of State the confirming authority shall be the Minister.

Several other provisions of the act of 1933 are of special interest in connection with by-laws:

At least one month before application for confirmation of the byelaws is made, notice of the intention to apply for confirmation shall be given in one or more local newspapers circulating in the area to which the byelaws apply.

For at least one month before application for confirmation is made, a copy of the byelaws shall be deposited at the offices of the authority by whom the byelaws are made, and shall at all reasonable hours be open to public inspection without payment.

The authority by whom the byelaws are made shall, on application, furnish to any person a copy of the byelaws, or of any part thereof, on payment of such sum, not exceeding sixpence for every hundred words contained in the copy, as the authority may determine.

The confirming authority may confirm, or refuse to confirm, any byelaw submitted under this section for confirmation, and may fix the date on which the byelaw is to come into operation, and if no date is so fixed the byelaw shall come into operation at the expiration of one month from the date of its confirmation.

The authority of the central government in England in connection with legislation that has been passed locally represents a situation that stands in marked contrast with that which has prevailed traditionally in the American states. The English arrangement, in this as in other

forms of central control, is justified on several grounds. In practice, no widespread complaint seems to exist on the score of actual interference with the essentials of local self-government. So far as by-laws are concerned, the central government has from time to time issued model codes,<sup>31</sup> until, at present, nearly every subject falling within the sphere of local activities has been treated. As a result, much uniformity has been introduced into local legislation without coercion in the bad sense of that word.

*Local finance.* The administration of the financial concerns of a local community displays certain resemblances to and certain differences from the financial administration of a great nation on the one hand or of a private enterprise on the other. The finances of a nation and of a local area, in the first place, resemble each other and differ from those of an individual or of a business in the fundamental respect that they are *public*. In other words, the money involved is that of the people in their collective capacity. This, in itself, is of much importance. The far-reaching fact that the profit motive is not normally a factor in governmental administration of finance is of a significance scarcely susceptible of exaggeration.

With respect to both local and central government, the practical matter of money is closely related to prevailing views concerning the general welfare. Thus, the question of public finance involves at the same time matters of the most practical nature and considerations of the most highly theoretical character. Hence, the fact is well recognized that the administration of finance is the most important and interesting single piece of work accomplished by government.

*Budget procedure.* In English local government, the several councils are the final local authority with respect to finance. These councils are, naturally, concerned with the twin problems of outlay and income. They all proceed by means of the examination and approval of a budget,<sup>32</sup> that is to say, of a carefully prepared plan of estimated expenditures and anticipated income. Inasmuch as, in public finance as

<sup>31</sup> Cf. p. 77, *infra*.

<sup>32</sup> The Local Government Act of 1933 expressly requires county councils to frame budgets. Other authorities, particularly the more important ones, employ this familiar instrument as well. Considerable variation undoubtedly exists. In a specific case, whether or not the plan of financial administration is sufficiently scientific to deserve application of the expression "budget"—especially with the connotations of "executive" budget—may be a matter of definition.

contrasted with private finance, the amount of revenue and the methods of obtaining it are dependent in some degree—less, of course, in the case of local than in the case of national finance—on the amount of estimated outlay, the expenditure side of the budget must in some measure receive consideration prior to consideration of income. This, in general, determines the order of proceeding of English councils. Expenditure, in a definite sense, comes first.

Final council action with respect to expenditure takes the form of authorization of payment of money out of a *fund* that exists in the area in which the council operates. Except for the parishes, the several areas are specifically required by the Local Government Act of 1933 to have "funds." In the county, the simple expression "county fund" is employed; whereas, in the boroughs and the urban and rural districts, the expression is, for reasons that will appear in connection with local revenue, "general rate fund." The act of 1933, in requiring in each case a fund, adds that "all liabilities falling to be discharged by the council <sup>33</sup> shall be discharged out of that fund."

Discussion by a council of estimates of expenditure, approval by it of the estimates, and authorization by it of payments from the fund, tend to assume a formal character. This is because these activities are preceded by preparatory activities that are of paramount practical importance.

Normally, estimates of local expenditure are formulated soon after the beginning of the calendar year, in anticipation of the beginning of the fiscal year on April 1st. In this way, for purposes of comparison, actual expenditures for nine months of the current year and probable expenditures for the remaining three months may be employed. The estimates may include sums calculated to provide for contingencies or to furnish a working balance; but the point has been judicially determined that, in the absence of special statutory authority, provision for reserve funds cannot be made. In practice, supplementary estimates are not infrequently employed. This practice is sometimes criticized; but strong criticism gives rise to a tendency to increase the margin

<sup>33</sup> In the case of rural areas, that is to say, counties and rural districts, the provision contains the qualifying phrase "whether in respect of general or special (county) purposes." This is because these areas, unlike boroughs and urban districts, have subdivisions, with respect to which the larger area may in individual cases make "special" expenditure.



that is regularly introduced into the regular estimates of expenditure, and for the balance to be spent near the end of the year.

In practice, the estimates of expenditure are prepared by the "spending" committees, that is to say, by the committees whose spheres of action are analogous to those of "spending" executive departments in the national government of every country. The "spending" committees are, of course, aided by, and dependent on, the advice, recommendation, and work of the permanent officials, in a way that corresponds roughly to the relationship between departments and civil servants in the preparation of the national budget. Finally, in the task of supervision, of checking, of coördinating, and of securing as much economy as possible, a part similar to, but also somewhat different from, that played by the treasury in the administration of national finance is played by the finance committee.

*Local finance committees.* According to the Local Government Act of 1933,

A county council shall appoint a finance committee consisting of such number of members of the council as they think fit for regulating and controlling the finance of the county, and shall fix the term of office of the members of the committee.

Subject to the provisions of any enactment relating to the standing joint committee or to any other statutory committee, no costs, debt or liability exceeding fifty pounds shall be incurred by a county council except upon a resolution of the council passed on an estimate submitted by the finance committee.

Thus, the existence of a finance committee is mandatory in the county. Furthermore, metropolitan boroughs are required by the London Government Act of 1899 to have finance committees. Other areas are not under statutory obligation to employ committees of this kind; but, aside from very small communities, finance committees are, in practice, found in all areas. Wherever they exist, their composition is subject to an important and interesting limitation. The provision of the Local Government Act of 1933 which authorizes standing committees and allows inclusion in their membership of persons from outside the council expressly excepts "a committee for regulating and controlling the finance of the local authority or of their area."

The general principle appears to be that the political aspect of expenditure, that is to say, the policy involved, is controlled by the

"spending" committees, the financial aspect by the finance committee. Here, manifestly, the resemblance between national and local finance is less clear. The supervision of the finance committee is supposed to ensure that the council shall be fully informed of the financial consequences of all money voted and that all money voted shall be applied and spent according to the directions resolved upon. The committee may, of course, exercise, because of its experience, a certain amount of moral authority; but it is not supposed to concern itself with governmental policy to the extent of lessening the responsibility of the "spending" committees. Thus, the finance committee properly consults the permanent officials on matters of a financial nature, that is to say, on matters of fact; but, in matters of policy, its negotiations should be with the other committees. In case of conflict, the council, of course, must decide.

During the examination by the council of the estimates of expenditure, the several committees defend and justify the proposals falling within their respective spheres. Final responsibility, of course, rests upon the council. Only when all expenditures have been approved by the council is it possible to deal with the most important element of local revenue, the rates.

*Local rates or taxes.* Rates are local taxes. They are direct taxes, being laid on certain real property. These local taxes are called rates because they are expressed in terms of the ratio of the amount of money required to be raised in this manner to the amount represented by the value of the real property subject to the tax. Manifestly, a council<sup>34</sup> must know two things. In the first place, it must know what part of its estimated expenditure it desires to meet through direct taxation. This is, in general, reckoned by subtracting from the total amount proposed to be spent the amount of revenue anticipated from other sources, such as from loans, from contributions by the central government, and from various fees, rents, and the like. In the second place, the council must know the value of the real property within its area. This value, known in England as "annual value," the council does in fact know; for an assessment is made every five years.

<sup>34</sup> As will appear later, only councils of boroughs and of urban and rural districts, as distinguished from county and parish councils, are known as "rating authorities."

*Valuation of property.* The process by which, in connection with rates, an assessment or valuation of real property is made involves somewhat complicated machinery. The process and the machinery are at present basically regulated by the provisions of the somewhat elaborate Rating and Valuation Act of 1925. This act fundamentally modified and consolidated the various elements of the situation that prevailed before the time of its passage. Thus, a part played before 1925 in assessment and valuation by certain agents and organs involved in the administration of the poor law, namely, overseers and boards of guardians, was abolished by the act of 1925. The new arrangements that were established by the stipulations of the act involved the creation of a variety of new agencies.

*Assessment areas and committees.* The Rating and Valuation Act of 1925 made provision, for purposes of the valuation of real property in connection with rates, for the establishment of a number of "assessment areas." All county boroughs are assessment areas, unless in a given case the council of a county borough decides and arranges that the borough shall join with one or more other suitable neighboring areas. Outside the county boroughs, arrangements are made by the county councils. The county may be made into one or more assessment areas, consisting in each case of one or more areas above the parish, that is to say, municipal boroughs and urban and rural districts; or a joint scheme may be submitted, for modification or approval by the central government, by the council together with another county or county borough. In the result, there are about 340 assessment areas. With respect to these, the act of 1925 stipulates simply that "There shall be an assessment committee for every assessment area." Thus, about 340 agencies perform work in which more than 600 were previously employed.<sup>35</sup>

In county boroughs, assessment committees are constituted by the councils. Their size is likewise determined by the councils; but at least one-third of the members must be taken from outside the council. In the case of assessment areas that are not county boroughs, the members of assessment committees are chosen partly by the county council and partly by the councils of the other areas involved. The size of the

<sup>35</sup> Because of the existence of special acts of Parliament, a few areas are still able to employ the old machinery.

representation of each area, and hence of the committee itself, is determined by the joint scheme that established the assessment area. In choosing their representatives, the councils are allowed to go outside their own membership. In all cases, where members of a council become members of an assessment committee,<sup>36</sup> they cease to hold office as members of the council, but they retain their seats. Members of assessment committees serve for a term, which cannot exceed five years, determined by the council that chooses them. A quorum cannot be less than three.

The first steps in the process of assessment are taken by the councils of the county boroughs and by the councils of the municipal boroughs and of the urban and rural districts. Occupiers of property are asked to fill out forms, answering certain questions of fact with respect to the property they occupy.<sup>37</sup> The answers must, under penalty of substantial fine for failure and of still larger fine for false statements, be made within three weeks. On the basis of the information furnished in these answers, the councils draw up a "draft list" of property values. The preparation of this list involves somewhat complicated principles and terminology. In general, these have been developed through the common law and judicial decisions, as supplemented by statutory provisions. The Rating and Valuation Act of 1925 prescribed a uniform scale of deductions which, when applied to the "gross value" of the principal kinds of real property, give the "net annual value." A part of the definition of these two values is the same. It is "the rent at which the hereditament might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe rent charge, if any . . ." The difference is that, in the case of gross value, the landlord and, in the case of the net value, the tenant is assumed "to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent . . ." When the draft list has been prepared, the assessment committees and their work of *revision* come into play.

<sup>36</sup> Where a council has a rating committee, that is to say, except where the whole council serves as the rating authority, members of such a committee cannot sit on an assessment committee.

<sup>37</sup> Sometimes the owner, not the occupier, pays the rates.

*Valuation committees.* Both during the preparation of the draft list and during the process of revision, an agency created by the Rating and Assessment Act of 1925 concerns itself with the attempt to introduce some uniformity into the discrepant results inevitably attendant on assessment by numerous separate bodies, tempted constantly in the direction of competitive under-assessment. This agency is the "county valuation committee." Its composition is determined by a provision of the act of 1925 :

. . . There shall be established in every county a committee of the county council (to be called "the county valuation committee") consisting of such number of persons, being members of the council of the county, as the council may think fit to appoint and of a representative of the assessment committee for each assessment area which, or any part of which, is comprised in the area of the county to be nominated by the assessment committee.

The activities of such committees are determined by an equally simple provision :

It shall be the duty of every county valuation committee to take such steps as the committee think fit for promoting uniformity in the principles and practice of valuation and assisting rating authorities and assessment committees in the performance of their functions under this Part of this Act . . .

Moreover, in the interest of further uniformity, the act of 1925 contained in its miscellaneous provisions the following stipulation :

For the purpose of promoting uniformity in valuation there shall be constituted, in accordance with a scheme to be made by the Minister after consultation with local authorities and associations of local authorities and any organization representing assessment committees . . . a Central Valuation Committee consisting of members of rating authorities, county valuation committees, and assessment committees, and of such other persons, if any, not being officers of the Department of Inland Revenue as may be provided by the scheme.

The central valuation committee at present consists of thirty-two members. Its duties are thus defined :

The Central Valuation Committee shall take into consideration the operation of this Act and shall give to the Minister such information

and make to him such representations in respect thereto as they may consider desirable for promoting uniformity and removing inequalities in the system of valuation, and shall for those purposes hold conferences or otherwise consult with such persons or bodies as they think desirable . . .

The Central Valuation Committee shall submit to the Minister an annual report of its proceedings.

No very striking results in the direction of uniformity seem yet to have been accomplished.

*Hearings on assessments.* Upon completion of the draft list, a copy must be sent to the assessment committee, notice must be communicated to the county valuation committee, and the list itself must be deposited at the offices of the council which has made it. Notice to the effect that this action has been taken must be published. The draft list is open to inspection for a period of three weeks. This arrangement exists for the purpose of allowing objections to be made by any one of several interested parties, as stipulated in the following provision of the Rating and Valuation Act of 1925:

Any person (including the county valuation committee and any local authority) aggrieved by the incorrectness or unfairness of any matter in the draft list, or by the insertion therein or omission therefrom of any matter, or by the valuation as a single hereditament of a building or a portion of a building occupied in parts, or otherwise with respect to the list, may in accordance with the provisions of this Part of this Act lodge an objection with the assessment committee at any time before the expiration of twenty-five days from the date on which the draft list was deposited.

At the end of the period of three weeks, the draft list, together with the information collected from occupiers and owners, must be sent to the assessment committee. This committee, in connection with its work of revision, must consider such objections as have been made. This it does in accordance with the terms of the act of 1925:

The assessment committee shall hold meetings for considering any objections made to the draft list in accordance with the provisions of this Part of this Act, and on consideration of any objection the objector, the rating authority, the county valuation committee, and the occupier of the hereditament to which the objection relates shall be entitled to appear and to be heard, and to examine any witness before the assessment committee and to call witnesses . . .

Moreover, the assessment committee is not, in deciding upon altera-

tions, confined to those suggested in objections. The act of 1925 authorizes the committee itself to make changes:

On their revision of the draft list the assessment committee may, subject to the provisions of this Act, make such alterations, insertions and corrections in the list, whether for the purpose of meeting an objection or for any other reason as they think proper.

Two months before the list is to come into force, the assessment committee must approve and sign it. The list is sent for keeping to the council that prepared it, and thereupon it becomes the valuation list for the area involved.

The possibility of objection does not disappear with the establishment of the valuation list. Suggestions of amendment, known as "proposals," can still be made. In fact, since the assessment committees need not have dealt with all objections before they approve the list, all outstanding objections automatically become proposals. However, proposals for amendment of the valuation list are not made to the assessment committee but to the council of the area involved.

*Appeals to courts.* The final step that is possible in connection with a valuation list is appeal to the courts of law. Statutory stipulations regulate in considerable detail the opportunity of appeal first to quarter sessions and then to the High Court of Justice. A few pertinent provisions of the act of 1925 outline the procedure:

Any person who appeared before the assessment committee on the consideration of an objection made before the committee under this Part of this Act may, if he is aggrieved by the decision of the committee on the objection, appeal against the decision, in manner provided by this Part of this Act, to the court of quarter sessions for the county or place where the hereditament to which the objection related is situate . . .

On appeal under this section the court shall, as it thinks just, either confirm the valuation list or alter the valuation list to give effect to the contention of the appellant so far as that contention appears to the court to be well founded.

On the determination of an appeal under this section any party to the appeal may, if dissatisfied with the decision of the court as being erroneous in point of law, make an application in writing at any time within twenty-one days after the date of the decision to have a case stated for the opinion of the High Court on the point of law, and the court shall, unless it is of opinion that the application is frivolous, state a case accordingly . . .

Though the Rating and Valuation Act of 1925 ensured that valuation should be made on a nation-wide scale for the first time in many years, the provisions of the act permitted some variation in dates for the first valuation, and somewhat more for the second. Thus, new valuation lists were made throughout the country so as to become effective either on April 1, 1928, or April 1, 1929. Such lists were made for the second time in 1932, 1933, or 1934. Third and subsequent lists were to be made regularly at five-year intervals.

*Basis of valuation and of rates.* The valuation placed upon real property in England is, it may be recalled, not the theoretical sale value, as in the United States, but the annual value. This is, in general, the value on the basis of which rates are reckoned. However, in 1928 and 1929, certain important exceptions were made by Parliament, in pursuance of an economic policy of relieving industry and agriculture. This is known as "derating." Industrial property—such, for example, as factories and workshops—is listed at only one-fourth of its value. The same is true of railway property. Agricultural land and such buildings as are employed directly in connection with agriculture are not valued at all and do not appear on the lists. Exemption of such property has thus been added to earlier exemptions of a smaller kind, such as Crown property, churches and chapels, schools of certain kinds, public parks, town halls, police stations, light-houses, and the like. Derating, as may be easily imagined, is an important basis of contributions by the central government of money to local areas.<sup>38</sup>

Rates are expressed in terms of a certain number of shillings per pound of valuation. Thus, if the valuation of property in a particular community is one million pounds, and if the amount of money desired to be raised is four hundred and fifty thousand pounds, the rate would be nine shillings per pound. Similarly, an occupier of property valued at fifty pounds would pay rates in the amount of twenty-two pounds ten shillings. Such a rate, being 45%, is calculated to shock an American on first acquaintance; but the fact must not be forgotten that the valuation involved represents assessed *annual* value, or the imputed or actual annual rental. An idea of the average rates employed in practice in England and Wales may be had from the following table:<sup>39</sup>

<sup>38</sup> Cf. pp. 55-59, *infra*.

<sup>39</sup> Taken from Ministry of Health, *Rates and Rateable Values in England and Wales, 1936-37*.



TABLE 5

## AVERAGE ANNUAL RATES PER POUND IN ENGLISH LOCAL UNITS

Class of Area	Estimated average amount in the pound of the local rates		Rateable value		Average amount per head of estimated population	
	1936-37 s.	1935-36 d.	Increase per cent (1936-37 compared with 1935-36) %	Valuation in force in April, 1936 £	Increase (+) or decrease (-) per cent (April, 1936 compared with April, 1935) %	Of rates estimated to be collected (1936-37) £ s.
London .....	11	2½	3·7	60,769,720	-1·7	7 14
County boroughs .....	13	8	2·5	95,399,812	+1·5	4 9
Non-county boroughs and urban districts .....	12	0½	4·0	108,570,148	+4·2	3 18
Rural districts .....	11	6½	4·1	33,789,938	+0·7	2 10
England and Wales .....	12	4½	3·5	298,529,618	+1·7	4 4
Wales .....	16	8¾	3·1	11,698,566	+0·8	3 10
Administrative counties outside London .....	11	11	4·0	142,360,086	+3·3	3 9

ENGLAND

*Rating areas.* County boroughs, municipal boroughs, and urban and rural districts are known as rating areas. In the county boroughs, the rating area and the assessment area are normally identical; whereas, in the case of the other rating areas, two or more are usually contained in an assessment area. In each rating area, the council is, according to a provision of the Rating and Valuation Act of 1925, the rating authority:

The council of every county borough and the council of every urban and rural district shall be the rating authority for the borough or for the county district, and from and after the appointed day no authority or person other than the council shall have power to make or levy any rate within the borough or district.

The council calculates and approves the rate. Moreover, the council is authorized by law to constitute a rating committee; and to this committee the council may delegate any of its authority except that of raising a loan or making a rate.

Counties and parishes are not rating areas, and their councils are not rating authorities. However, the distinction involved is largely technical. Counties and parishes do not levy rates; they issue to the rating authority what are known as "precepts." These precepts mention the lump sum required by the area involved; but this manifestly can easily be expressed in terms of a rate as well. The rating authority must levy a rate sufficiently large to cover both the amount of precepts and the amount it requires for itself to be raised by rates. The rating authority has no discretion in respect of precepts. It cannot, when levying the rate, refuse to include the amounts required. As a matter of fact, a general rate is required by law in urban areas; and, in rural areas, a general rate is also employed, though special rates may be levied for communities that incur special expenses. The general rate, which incorporates various rates that formerly existed, was established by a provision of the Rating and Valuation Act of 1925:

As from the date of the first new valuation, the rating authority of each urban rating area, in lieu of the poor rate and any other rate which they have power to make, shall make and levy for their area a consolidated rate which shall be termed "the general rate."

The rating authority, once the rate has been made, must, within seven days, give public notice of the fact. This it may do in one or more such ways as publication on church doors, publication in other conspicuous place, or publication in newspapers.

*Local government revenues.* An idea of the amount of money that accrues to local communities in England and Wales from rates, as compared with the several other sources of revenue for purposes of local government, may be had from the following table: <sup>40</sup>

TABLE 6

## RECEIPTS OF ENGLISH LOCAL UNITS, 1933-34

Total Receipts (1933-34) .....	£533,302,923
Rates .....	£148,554,121 (27.9%)
Rents, etc. ....	176,466,936 (33.1%)
Loans .....	86,664,452 (16.2%)
Grants .....	121,617,414 (22.8%)

The revenue derived by local communities from direct payments such as rents is, as a whole, of considerable proportions. It was in 1933-34, as may be seen, almost exactly one-third of all local receipts. However, so far as classes of communities and individual communities within a class are concerned, the situation varies within wide limits. Thus, local areas own greatly varying amounts of property; and the property owned varies greatly in value, depending on its nature, location, and other considerations, for the most part uncontrollable, that determine property values. Of this class of revenue, about two-thirds must be credited to what are known as "trading services." Receipts to the amount of approximately £114,000,000 are derived from these socialized activities. The largest single item is that of receipts from electricity supply; the next largest from tramways, bus services, and other kinds of transport; the third from waterworks; and the fourth from gas works. Other sources of income of this kind include cemeteries, markets, harbors, docks, piers, canals, quays, ferries, and numerous other miscellaneous elements. Manifestly, great variations as among communities will exist in this respect. Moreover, not only is a

<sup>40</sup> Compiled from *Statistical Abstract for the United Kingdom*. Eightieth Number: Cmd. 5353 (1937).

trading service in one community a service that cannot be or is not undertaken in another; even where two communities undertake the same service, conditions may vary or different policies may prevail. In the last mentioned respect, there is difference of opinion as to whether an attempt ought to be made to realize a profit from trading services. One community may adopt one policy, another the other. On the whole, the view prevails that no profit should be made. Indeed, the whole item of receipts from trading services is highly illusory; for receipts of this kind are generally offset by the costs. Whatever the differences in special cases, trading services are, in the country at large, conducted at a loss. So far as the other receipts from direct payments are concerned, the largest item consists of rents and other returns from housing and town-planning undertakings. Other items include rents and other income from small holdings and allotments and repayments in connection with private improvements undertaken by local government agencies.

*The power to borrow.* Local councils, except in extremely rare cases, are given by law no general power to borrow money. Though, as has been seen, nearly twenty per cent of all local income is derived from loans, councils borrow this money through specific authorization. Acts of Parliament grant this power and regulate in various ways the borrowing procedure. More especially, aside from very exceptional circumstances, councils are empowered to undertake borrowing only with the consent of an executive department of the central government. Generally, the department is the Ministry of Health.<sup>41</sup> However, the sanctioning departments may also on occasion be the Home Office, the Ministry of Transport, the Electricity Commissioners, or the Ministry of Agriculture and Fisheries. In this respect, the question of local loans is an extremely important aspect of administrative control of local government.<sup>42</sup>

Local governmental borrowing is defended on grounds of economy and justice. The practice is, in general, employed where large capital outlays would be too great a burden on annual income and where it

<sup>41</sup> Borrowing by parish councils must receive the consent of the county council as well as of the Ministry of Health. County councils may without consent borrow in order to lend to parish councils.

<sup>42</sup> Cf. pp. 72-80, *infra*.

appears equitable for future generations, who will derive some of the benefits of the expenditure, to contribute to it. In other words, the objects for which borrowing is undertaken are relatively permanent.<sup>43</sup> Such undertakings came to be considered necessary in the eighteenth century. Recourse to loans began at that time. At present, about one-third of the money borrowed in local government is devoted to capital outlays in connection with trading services. Another third consists of loans for capital works in connection with housing and town-planning. The remaining third is borrowed in connection with various local activities, the most important examples being public health, highways and bridges, and education.

The Local Government Act of 1933 modified and incorporated into its terms most previous statutory provisions dealing with local borrowing. Only a few stipulations of former acts<sup>44</sup> were left outstanding. The act of 1933 stipulates, for example, the purposes for which money may be borrowed locally:

A local authority may, with the consent of the sanctioning authority, or in the case of a parish council with the consent of the Minister and of the county council, borrow such sums as may be required for any of the following purposes, that is to say:—

- (a) for acquiring any land which the local authority have power to acquire:
- (b) for erecting any building which the local authority have power to erect:
- (c) for the execution of any permanent work, the provision of any plant, or the doing of any other thing which the local authority have power to execute, provide, or do, if, in the opinion of the sanctioning authority or, in the case of a parish council, in the opinion of the Minister and of the county council, the cost of carrying out that purpose ought to be spread over a term of years:
- (d) in the case of a local authority being a county council, for the purpose of lending to a parish council any money which the parish council are authorized to borrow:
- (e) for any other purpose for which the local authority are authorized under any enactment, including any enactment in this Act, or under any statutory order, to borrow:

<sup>43</sup> Borrowing may be undertaken in order to meet current expenses pending collection of receipts from rates; and councils may reborrow, on certain conditions, to pay off outstanding loans.

<sup>44</sup> Primarily those of the Public Health Act of 1875.

trading service in one community a service that cannot be or is not undertaken in another; even where two communities undertake the same service, conditions may vary or different policies may prevail. In the last mentioned respect, there is difference of opinion as to whether an attempt ought to be made to realize a profit from trading services. One community may adopt one policy, another the other. On the whole, the view prevails that no profit should be made. Indeed, the whole item of receipts from trading services is highly illusory; for receipts of this kind are generally offset by the costs. Whatever the differences in special cases, trading services are, in the country at large, conducted at a loss. So far as the other receipts from direct payments are concerned, the largest item consists of rents and other returns from housing and town-planning undertakings. Other items include rents and other income from small holdings and allotments and repayments in connection with private improvements undertaken by local government agencies.

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<sup>41</sup> Borrowing by parish councils must receive the consent of the county council as well as of the Ministry of Health. County councils may without consent borrow in order to lend to parish councils.

<sup>42</sup> Cf. pp. 72-80, *infra*.

appears equitable for future generations, who will derive some of the benefits of the expenditure, to contribute to it. In other words, the objects for which borrowing is undertaken are relatively permanent.<sup>43</sup> Such undertakings came to be considered necessary in the eighteenth century. Recourse to loans began at that time. At present, about one-third of the money borrowed in local government is devoted to capital outlays in connection with trading services. Another third consists of loans for capital works in connection with housing and town-planning. The remaining third is borrowed in connection with various local activities, the most important examples being public health, highways and bridges, and education.

The Local Government Act of 1933 modified and incorporated into its terms most previous statutory provisions dealing with local borrowing. Only a few stipulations of former acts<sup>44</sup> were left outstanding. The act of 1933 stipulates, for example, the purposes for which money may be borrowed locally:

A local authority may, with the consent of the sanctioning authority, or in the case of a parish council with the consent of the Minister and of the county council, borrow such sums as may be required for any of the following purposes, that is to say:—

- (a) for acquiring any land which the local authority have power to acquire:
- (b) for erecting any building which the local authority have power to erect:
- (c) for the execution of any permanent work, the provision of any plant, or the doing of any other thing which the local authority have power to execute, provide, or do, if, in the opinion of the sanctioning authority or, in the case of a parish council, in the opinion of the Minister and of the county council, the cost of carrying out that purpose ought to be spread over a term of years:
- (d) in the case of a local authority being a county council, for the purpose of lending to a parish council any money which the parish council are authorized to borrow:
- (e) for any other purpose for which the local authority are authorized under any enactment, including any enactment in this Act, or under any statutory order, to borrow:

<sup>43</sup> Borrowing may be undertaken in order to meet current expenses pending collection of receipts from rates; and councils may reborrow, on certain conditions, to pay off outstanding loans.

<sup>44</sup> Primarily those of the Public Health Act of 1875.

Provided that the consent of the sanctioning authority shall not be required to a borrowing by a county council for the purposes of paragraph (d) of this section.

*Terms and repayment of loans.* The total of outstanding local loans amounted in 1933-34 to the sum of £1,404,362,000. Standing to the credit of sinking funds for the repayment of loans was the sum of £98,369,000. Inasmuch as the local councils are prohibited by law from making any permanent debt, every proposal for borrowing must specify the period for which the loan is to be made. Thus, the Local Government Act of 1933 stipulates that

Every sum borrowed under this Part of this Act shall be repaid within such period as the local authority, with the consent of the sanctioning authority, may determine:

Provided that the period for the repayment of a sum so borrowed shall not exceed, in the case of a sum borrowed for any of the purposes specified in the second column of the Eighth Schedule to this Act, the period specified in relation thereto in the third column of that Schedule, or, in any other case, the period of sixty years.

The eighth schedule of the act sets out the maximum periods for which money may be borrowed by local councils for terms other than the normal maximum of sixty years. It specifies eighty years in the case of former acts that deal with acquisition of land for purposes of allotments and small holdings or that deal with general purposes in respect of housing. It specifies thirty years in the case of the Tramways Act of 1870, and allows such period as the Minister of Transport may sanction in the case of the Road Traffic Act of 1930. In practice, the executive departments of the central government, in exercising their discretion to fix the period within the maximum, rarely allow the full maximum except in the case of land. For example, with respect to electricity, typical periods allowed are sixty years for land, forty years for buildings, twenty-five for mains, twenty for plant, and ten for equipment. At the end of the authorized period, whatever it may be, the loan must be repaid in accordance with the mode fixed in the loan proposal. In addition to the sinking fund system, the principal methods by which repayment is made are the system of instalments, the system of terminal annuities, and a system combining two or more of the others.



The Local Government Act of 1933 authorizes no less than eight modes<sup>45</sup> by which money may be borrowed. Four of the principal methods are provided for in a single stipulation:

Where a local authority are authorized to borrow money, they may, subject to the provisions of this Part of this Act, raise the money either—

- (a) by mortgage; or
- (b) with the consent of the Minister, by stock issued under this Part of this Act; or
- (c) by debentures or annuity certificates issued under the Local Loans Act, 1875, as amended by any subsequent enactment:

Provided that a parish council shall not borrow otherwise than by way of mortgage.

The oldest and most popular method is that of mortgage of rates and other revenue. The other methods include bank overdraft, employment of money contained in sinking funds, advance by the central government of part of the proceeds from sales of national saving certificates in the locality, and issuance of housing bonds. Thus, in general, local communities, acting through their councils, may enter the money market like a private borrower and may, on occasion, borrow from the central government.

*Grants in aid.* A final source of local revenue consists of contributions from the central government. Such contributions are known as grants in aid. As has been seen, the local areas, as a whole, receive nearly a quarter of their income in this way. So far as the several classes of areas are concerned, rural communities receive a somewhat larger share of the grants than urban communities. Counties receive somewhat more than boroughs, rural districts<sup>46</sup> more than urban districts.

Limitations on local councils with respect to the real property on which rates may be levied—limitations, in other words, that grow out of exemptions of certain kinds of property from part or all of local taxation—are imposed by acts of Parliament, that is, an agency of central government. Hence, an immediate obligation rests upon the central government to make up the amounts which the local communities might, but for the exemptions, realize from the rates. Inasmuch

<sup>45</sup> Still other methods may be authorized by powers specially granted.

<sup>46</sup> Boroughs and rural districts receive about equal shares of their total revenue from grants in aid.

as the most far-reaching derating was the work of the Local Government Act of 1929, it is not surprising that this act greatly modified the system of grants in aid and that its provisions, as amended,<sup>47</sup> form the legal basis for a large part of the existing system. However, at the time of the modification effected by the act of 1929, grants in aid were nearly a century old. The first use of contributions on the part of central government to local government is to be found in the years following the great Reform Act of 1832. A beginning was made through a grant of subsidies in respect of police matters.<sup>48</sup> Within a period of fifty years, such grants were not only continued and increased but extended to such things as education, road building, and public health. At the time of the Local Government Act of 1888, a new arrangement was made whereby, in place of direct grants other than for education, the proceeds of certain general taxes, such as revenue from licenses, were assigned to the localities. However, after a short interval, direct grants began to be increased. The whole question of the financial relations of central and local government became more and more complicated; and, at the same time, more interest in these relations was manifested, and more attention given to them. Several studies of the situation were made, and various recommendations were offered. By 1929, matters were ripe for reform; and, even without the immediate problem raised by relief through derating of industry and agriculture, the whole system of grants would probably have received early attention.

*Recent grant-in-aid legislation.* The general outlines of the re-modeled system of grants in aid are established by two provisions of the Local Government Act of 1929. The first is this:

The grants set out in the Second Schedule to this Act (in this Act referred to as "the Discontinued Grants") shall cease to be payable in respect of any period after the thirty-first day of March, nineteen hundred and thirty . . .

The result of this stipulation is that the only specific grants that remain are those for police, education, housing, and, in certain cases, highways. The second provision is of much interest and importance:

<sup>47</sup> Primarily by the Local Government (Financial Provisions) Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 22.)

<sup>48</sup> For the present situation, cf. pp. 57-58, *infra*. See also Table 6, p. 51.

There shall be paid out of moneys provided by Parliament in respect of the year beginning on the appointed day, and each subsequent year, an annual contribution towards local government expenses in counties and county boroughs to be called the "General Exchequer Contribution."

The specific grants in aid that were continued by the Local Government Act of 1929 are commonly called *percentage* grants. In general, the central government contributes to local government, on condition that stipulated requirements are complied with and minimum standards maintained, certain sums of money that represent a given proportion of the outlay made by the localities in respect to the four specific activities involved. For example, in the matter of police, the counties and boroughs that are responsible for their own police receive from the central government an amount equal to fifty per cent of the "approved net expenditure." The requirements and standards involved are implied by the word *approved*. Inspection takes place at the hands of agents of the central government. If the force is approved with respect to numbers, organization, equipment, scale of pay, and so on, the Secretary of State for Home Affairs issues a certificate to that effect; and on the basis of this the grant is made. So far as grants for education, housing, and highways are concerned, regulations of considerable variety exist; and some of the details are by no means simple. In several connections, complicated formulas are employed for calculating the amount of the grants. However, in general, the principle is that if the central government approves what is done, contributions are made; so that, again in general, the more local government undertakes, the more financial assistance it receives.

*The "block grant."* The "general exchequer contribution"—the subsidy which, in addition to the specific grants, is authorized by the Local Government Act of 1929 to be paid by the central government to local government—is made for the purpose of aiding local communities in meeting their general expenses. Such a contribution is commonly known as a *block grant*. All counties and all county boroughs receive general grants of this kind. The amount contributed to a county borough is expended by the council of the borough wholly for the purposes of the borough; but a county must share with the divisions of the county the block grant made to it, the resulting practice being that the county retains about half of the general contribution and

distributes the rest to municipal boroughs and to urban and rural districts.

A somewhat complicated formula is employed to determine the amount of the general exchequer contribution allotted to the several counties and county boroughs. The general guiding principle is financial need; in other words, a poor community receives more than a wealthy one. However, there is room for considerable variation. The basis of the reckoning is population. At the same time, the true population is only a primary consideration. This population is "weighted" by the application of additional considerations. The calculation in each instance is different and complicated; but the factors involved include the number of small children in the community, the amount of unemployment, the number of miles of roads maintained, and the value of property subject to rates. In the result, the amount received from this kind of grant is affected to some extent by the scale on which a community conducts its government, though the effect is not so great as in the case of specific grants.

With respect to block grants, the amount received by a county or county borough is equal to a certain number of pence multiplied by the weighted population. The number of pence, in turn, is calculated by dividing the total sum of available money by the total weighted population of England and Wales. The total sum available is now determined by a provision of the Local Government (Financial Provisions) Act of 1937:

The amount of the General Exchequer Contribution to be paid under . . . the Local Government Act, 1929 . . . in respect of each year in the third fixed grant period shall be the sum of forty-six million, one hundred and seventy-two thousand pounds, and in respect of each year of every following fixed grant period such amount as Parliament may hereafter determine with respect to the fixed grant period, so, however, that the General Exchequer Contribution for the fourth or any subsequent fixed grant period . . . shall be an amount bearing to the total amount of rate and grant borne expenditure in the penultimate year of the preceding fixed grant period a proportion not less than twenty-two and one-half per cent.

Originally, block grants represented the fusion of three items. The first consisted of sums previously paid in such percentage grants as

were discontinued by the act of 1929. The second item represented the amount of such resources from rates as were no longer available to local communities because of the derating of agricultural and industrial properties. The third was an additional sum provided by the act.

*Reasons for grants in aid.* Grants in aid may be justified in several ways. In the first place, all local governmental activities concern in some degree the country as a whole. If this is true even of such matters as are essentially and properly local, the situation is still clearer in the case of activities that are everywhere recognized to be of national importance. On this principle, the central government—that is to say, the government of the country as a whole—establishes by law certain requirements that must be met by the local communities. Then, if the localities are constrained to undertake certain activities in order to comply with the requirements set up, they will expect, and doubtless ought to expect, financial assistance. Thus, the relationship is in reality a reciprocal one. The localities expect aid if they are required to do certain things, and the central government insists on stipulating certain conditions if it is to give financial aid. Furthermore, such grants are a simple and effective means to an end. Improvements and higher standards can manifestly be encouraged through conditional grants. In all this, further justification is to be seen in the principles on which taxation is based. Money is taken from private individuals for public use. After all, funds of the central government come, roughly speaking, from the same source as local revenue; in other words, taxpayers and ratepayers are, in general, the same people. Therefore, just as the expenditure of funds by the central government for national purposes is not spread equally throughout the country, but is made in such a way that the more fortunate contribute to the welfare of the less fortunate, so grants in aid may be justified by the very differences in the wealth and needs that exist in respect of the several communities.

*Audit.* The various activities in connection with local finance naturally involve the keeping of accounts. As a matter of fact, accounts of expenditure and income for the fiscal year, that is, for the period extending from April 1 to March 31, are kept by all local authorities and by parishes that are without councils. A double-entry system of bookkeeping is regularly employed. The Minister of Health possesses considerable, though not complete, power to prescribe details of form

and of method in the matter of local accounts; and, as a result of numerous regulations that have been issued, a certain amount of uniformity has been introduced into local accounting. However, considerable lack of uniformity also exists; and comparison is sometimes difficult if not impossible.

Annual local accounts are regularly audited. The agents who audit nearly, though not quite, all these accounts are central government officials known as "district auditors." Their general position is at present determined by the following provisions of the Local Government Act of 1933:

The Minister may, with the consent of the Treasury, appoint such number of district auditors as he thinks necessary for the performance of the duty of auditing the accounts which are for the time being by law subject to audit by district auditors, and may remove any auditor . . .

The Minister may, with the consent of the Treasury, appoint, either temporarily or otherwise, assistant district auditors and other persons to assist district auditors in the performance of their duties . . .

In practice, a district auditor is usually appointed from among the assistant auditors.

The country as a whole is, for purposes of audit, divided into five areas. In each of these areas, there is an "inspector of audits." District auditors, as their name implies, are assigned to districts within the several areas, in accordance with the following provisions of the Local Government Act of 1933:

The Minister may assign to district auditors their duties, and the districts in which they are respectively to act, and may change wholly or in part such duties or districts, and every district so assigned to a district auditor . . . shall be deemed to be an audit district . . .

Normally, each county forms a district; but, in some cases, the district consists of part of a county or of a group of counties.

The extent of the operation of the system of district auditors is determined by the Local Government Act of 1933. The pertinent provisions are as follows:

The following accounts shall be subject to audit by a district auditor . . . that is to say,—

- the accounts of every county council, metropolitan borough council, urban district council, rural district council and parish council, and of every parish meeting for a rural parish not having a parish council;
- the accounts of any committee appointed by any such council or parish meeting;
- the accounts of any joint committee constituted under . . . this Act or under any enactment repealed by this Act, of which one or more of the constituent authorities are a county or metropolitan borough or district or parish council or the council of a borough all of whose accounts are subject to audit by a district auditor;
- any other accounts which are made subject to audit by a district auditor by virtue of any enactment or statutory order or, in the case of the accounts of the council of a borough, by virtue of a resolution adopting the system of district audit passed by the council in accordance with the provisions of this . . . Act . . .

In the result, the accounts of somewhat more than ten thousand local authorities are every year audited under the system of district auditors. As is clearly implied in the foregoing provisions, the accounts not subject to audit by district auditors are to be found in boroughs other than the metropolitan boroughs of London.

The principle of the audit of accounts in boroughs was established at the time of the Municipal Corporations Act of 1835. The exemption of boroughs from comprehensive audit by district auditors is recognized in the following provisions from the Local Government Act of 1933:

In every borough there shall, unless and until any such alternative method of audit as hereinafter mentioned is in force at the commencement of this Act or is adopted by the council, be three borough auditors, two elected by the local government electors for the borough, called elective auditors, and one appointed by the mayor, called mayor's auditor.

An elective auditor shall be a person qualified to be a councillor of the borough, but he may not be a member or officer of the council.

The mayor's auditor shall be appointed from among the members of the council

The term of office of each auditor shall be one year.

In practice, however, the situation is modified in accordance with subsequent provisions of the act of 1933, worded as follows:



The council of a borough may, by means of a resolution passed and confirmed in accordance with the provisions of this section, adopt either—the system of district audit; or the system of professional audit.

Of the approximately 350 boroughs outside London, only about one-half retain the 1835 system. The remaining half are divided about equally between those that employ the district audit and those that use the professional audit. It should be remembered, moreover, that, even in the case of boroughs that continue under the 1835 arrangement and of those that employ the professional audit, certain of the accounts—such, for example, as those connected with education and public assistance—are subject to the district audit.

The procedure in the matter of the district audit is determined by various provisions of the Local Government Act of 1933. The act requires that all accounts subject to audit “shall be made up yearly to the thirty-first day of March” and that the audit shall take place “as soon as may be thereafter.” The auditor sends notice to the clerk of the authority, informing him of the time of the audit. Thereupon, a copy of the accounts and of numerous pertinent books and documents must be deposited for public inspection at the appropriate office. At least two weeks in advance, notice of such deposit must be advertised in the newspapers, except in the case of parishes, where “public notice” is sufficient. After the deposit has been made, the documents, according to the act of 1933,

shall for seven clear days before the audit be open at all reasonable hours to the inspection of all persons interested, and any such person shall be at liberty to make copies of extracts from the deposited documents, without payment.

When the auditor has arrived, persons who are interested “may be present or may be represented at the audit and may make any objections to the accounts before the auditor”; and the auditor may by written notice summon before him any accountable person and may require the production of documents and books.

The principal duty of an auditor is, in the words of the act of 1933, “to disallow every item of account which is contrary to law.” In the course of a year, a hundred or more officers may lose their positions



as a result of defalcations detected in the audit; and illegalities to the amount of several thousand pounds may be discovered. However, in proportion to the whole number of officers and to the whole amount of local sums, a minute fraction is involved. Wherever an irregularity is found, district auditors, as distinguished from borough auditors, possess the power "to surcharge" the amount upon the person responsible; that is to say, a councillor or officer may be ordered to pay the amount out of his own pocket. If the amount is more than £500, the person involved is disqualified from membership on a local authority.

The report of an auditor contains primarily information concerning such illegalities as are detected. At the same time, it may also include criticism of accounting methods. The auditor and his staff, when engaged in an audit, may remain in a community for a week or more. The report is made within two weeks of the conclusion of the visit.

From a decision of an auditor, an appeal may be taken to the High Court in cases where the amount involved is more than £500; and, where the amount is less, an appeal may be made to either the High Court or the Minister of Health. In case of an appeal, the Court or the Minister may remit the surcharge in whole or in part. From a decision of the Minister there is no appeal to the courts. Finally, where illegality results wholly from ignorance, the council—before the auditor states his findings and often at the suggestion of the auditor himself—may by law apply to the Minister of Health for special sanction to cover the amount involved.

*Council control of policy.* With respect to what is usually regarded as a third function of legislatures, namely, control over the executive branch of government, analogy between central government and local government is, from the nature of the case, less close than in the cases of legislation and financial administration. A primary consideration is the fact that in local communities the relationship between legislature and executive is not *parliamentary* in type. The characteristic phenomenon of ministerial responsibility is, of course, not found in local government. At the same time, just as some control of the legislative over the executive exists even in general governments which are not parliamentary in character, like that of the United States for example,

so local councils do, in practice, maintain some oversight of executive and administrative policy.

In so far as a policy-forming executive can be said to exist in English local government, it consists for the most part of committees. Such committees are manifestly not very closely similar to ministers. Indeed, they are, for all practical purposes, frequently identical with the council. In other words, the distinction between legislative policy and executive policy, which is not always easy to draw with respect to general government, is much less easy to draw in local government. Indeed, it is almost true to say that the distinction does not in reality exist in local government and that there are not in actuality two kinds of policy, but only one. At all events, in so far as both do exist, the council for the most part determines the one and the other. Where the council as a whole makes a decision, often the matter involved—appointment for example—is not even by analogy legislative. Again, when the council specifically delegates authority to a committee, or when the committee acts in general as a political executive, the decisions and the policy are, in effect, those of the council. The power of the purse rests with the council; and this, in itself, gives a last word to that body. The council may, and in practice does, demand and secure information concerning the progress of local affairs. It may, and does, criticize. In this way, the council can ensure that policy and those who formulate policy will be acceptable to it. Thus, several important aspects of parliamentary government exist. Other aspects, it is true, do not regularly manifest themselves; but, after all, local government is not identical, but merely analogous, with government on a general scale.

The relatively little distinction between the council and its committees is responsible for the fact that functions commonly regarded as executive assume a modified form in local government. Thus, for example, formal functions, analogous to those performed by heads of states everywhere, are performed in English local government by several officials, of whom the mayor is perhaps the best example. However, the mayor is otherwise, in his capacity as member of and presiding officer in the council, essentially a legislative, not an executive, agent. So far as the functions are concerned that are usually considered executive in character, the council itself, as has been seen,

often plays a definite part; so that familiar distinctions tend to break down. The function of appointment is, again, a simple example. It is a function that in important cases is performed by the council itself. Local permanent officials, it is true, perform functions somewhat more closely analogous with those of civil servants; but it is worth noting that the relationship of local officials with the political agents and organs of local government involves a direct relationship between the legislature and routine officials that is basically different from the relationship that prevails under the parliamentary system of government.

In local government, an essentially executive function such as the direction of foreign policy has little counterpart. The same is true of what are sometimes called the judicial functions of the executive, of which the power of pardon is the best example. Again, functions that may be performed by national executives in connection with legislation, such, for example, as delivering messages to the legislature, calling it into special session, exercising a "veto," and the like, either are not performed at all in English local government, or else involve no definite distinction between legislative and executive.

Finally, the primary executive function, namely, the direction of law enforcement, though it is of the highest importance in connection with local government, is not so definitely associated with essentially executive agents as to involve contrast between law making and law enforcement. More specifically, the police function is to be associated with local government as a whole rather than with a specific branch of it. This is merely to repeat that, although the functions of local government may in narrow perspective be classified as legislative and executive, all local government is, in the broader perspective of government in general, administrative in type.

### *Sec. 7. The Power to Provide Public Services*

Consideration of the services that local government furnishes in a manner that is essentially direct, that is to say, consideration of the line functions of local government, involves several related questions of the highest importance and interest. In the first place, although all functions of local government—staff as well as line—must, being the activities of agents, inevitably be viewed in terms of the authority of the agents to perform the functions, nevertheless the question of au-

thority or power is especially important with respect to line functions. Answers to questions concerning what services local government ought directly to furnish to people must be made with due regard for the question of what power is possessed that authorizes undertaking to furnish them. In the second place, within the limits of the question whether power exists or ought to be sought, the question of what services ought directly to be furnished raises the fundamental problem of the ultimate function of government. In other words, within the limits that determine what government can do, answer must be sought for the question what government ought to do. That is to say, since line functions are in general *ends* as distinguished from means, consideration of line functions raises the problem of the final end of government. Then again, closely connected with the question of what local government can do and ought to do is the question of what in practice it does actually do.

What local government can do is, of course, determined by the extent of its authority or power. Such power, since local government is not independent, is, from the nature of the case, limited. The limits are determined by law. Local government possesses only such power as it derives from law.

*Legal sources of local powers.* The positive aspect of the extent of local government power is determined by the general principle that all the authority possessed by local government is derived from Parliament. In other words, the source of the power of local government is statute law. Moreover, this fundamental principle with respect to power in general must be viewed in connection with prevailing practice relative to specific powers. As a matter of fact, local government derives powers from several kinds of legal enactment. Indeed, local powers may be derived from some five varieties of statutes.

*General acts.* Any given local community secures part of its power from "*general acts*" of Parliament. These are acts that vest authority of some kind in one or more classes of local government agencies. Thus, for example, an act granting power to all counties with respect to highways would be a general act. The public health acts and the education acts are examples of this kind of act. Such acts involve no necessary initiative on the part of local communities. The acts result from having been passed through Parliament like any public bill. Once

enacted into law, they *ipso facto* confer power on all agencies to which their provisions apply. These agencies may have an obligation imposed upon them as well as authority vested in them; but, where the power is of a discretionary kind, the local agencies possess the power, no matter whether they exercise it or not.

*Local acts.* In the second place, a local community derives some of its powers from "*local acts*." An act of this kind, unlike general acts, adds to the powers only of the community that takes the initiative in promoting the passage of the act by Parliament. In accordance with the principle that a community possesses only such power as is granted to it by Parliament, the authority to seek power through a local act is itself granted by act of Parliament. The prevailing provisions are at present to be found in the Local Government Act of 1933, into which various previously existing stipulations were, after amendment and consolidation, incorporated. These provisions, by authorizing the expenditure of public funds for the purpose, empower counties,<sup>49</sup> boroughs and urban and rural districts, but not parishes, both to promote and to oppose local bills in Parliament.<sup>50</sup> The power is granted in a simple provision:

Subject to the provisions of this Act, where a local authority, other than a parish council, are satisfied that it is expedient to promote or oppose any local or personal Bill in Parliament, the local authority may promote or oppose the Bill accordingly, and may defray the expenses incurred in relation thereto . . .

Where a local community desires to take such action, its council must comply with somewhat detailed stipulations. The initial step is the same in the case of promotion and opposition. It is defined in the act of 1933:

A resolution to promote or oppose a Bill under the powers conferred by this Part of this Act shall not be effective unless passed by a majority of the whole number of the members of the authority at a meeting thereof held after ten clear days' notice of the meeting and of the purpose thereof has been given by advertisement in one or more local newspapers circulating in the area of the authority, such notice being given in addition

<sup>49</sup> The administrative county of London and its subdivisions are excluded.

<sup>50</sup> An exception is made of bills for competition with existing gas and water companies established under act of Parliament.

to the ordinary notice required to be given for the convening of a meeting of the authority.

Where a council opposes the bill being presented by another council, the formal requirements go no further ; but promotion of a bill requires additional steps, as follows :

In the case of the promotion of a Bill, the resolution shall be published in one or more local newspapers circulating in the area of the local authority and shall be submitted by the Minister for his approval, and the local authority shall not proceed with the promotion of the Bill if the Minister notifies the authority that he disapproves the resolution.

The approval of the Minister shall not be given until the expiration of seven days after the publication of the resolution, and in the meantime any local government elector for the area of the local authority may give notice in writing to the Minister of his objection thereto.

In the case of the promotion of a Bill, a further meeting of the local authority shall be held as soon as may be after the expiration of fourteen days after the Bill has been deposited in Parliament, and, unless the propriety of the promotion is confirmed by a majority of the whole number of the members of the local authority at that meeting, the local authority shall take all necessary steps to withdraw the Bill.

Not less than ten clear days before the date of a meeting to be held under this subsection, the like notice shall be given in relation thereto as is required to be given in relation to a meeting held under . . . this section.

These provisions completely regulate the matter of promoting a local bill, so far as counties and rural districts are concerned. However, in the case of boroughs and urban districts, the ratepayers, according to the act of 1933, possess special rights of intervention. "A public meeting of local government electors" is required to be held

on a day named, not being less than fourteen nor more than twenty-eight days after the first advertisement of the notice, for the purpose of considering the question of the promotion of the Bill.

Little interest, apparently, is shown by the voters in these meetings. One estimate of attendance suggests that the average is about 15% of the qualified electors. However, the decision of the meeting is not final. Within seven days, a petition signed by a small number of voters may secure a local referendum ; or, if the decision of the meeting

is against promotion, the council may demand submission to the voters. If the vote is adverse in a referendum, or if no referendum follows an adverse vote in the public meeting, the council must withdraw the proposal of a local act. If, on the other hand, the formalities for promoting a local bill are complied with, the bill must, in order to become law, be passed through Parliament in accordance with "private bill procedure." This procedure, marked at the committee stage by its resemblance to that of a law court, is well known by students of English central government to be exceedingly expensive. The average cost of local acts, when not opposed, is said to be about £3,000. When the bill is opposed, the average is said to be approximately £4,500 or £7,000, depending on whether it is opposed in one house or both. In any event, through local acts communities secure a great variety of powers. Power with respect to town planning is a very usual example. Powers to establish a bank, to operate telephones, to manage a restaurant, and to have a symphony orchestra are other examples.

*Adoptive acts.* A third source of powers of local government consists of what are known as "*adoptive acts*." These acts display resemblances to both general and local acts. Their provisions are general in their application; but they confer power only on such communities as take sufficient initiative to "adopt" them. The procedure of "adoption" varies in the case of individual acts, almost no uniformity manifesting itself. The one stipulation common to all such acts is a requirement that notice be given to the ratepayers through advertisement in the local newspapers. One such act may require that notice be also posted on church doors; and another act of the same year may stipulate that the additional notice must be given through the distribution of handbills. In some cases, adoptive acts provide that a special meeting of the council must be held for the purpose of adopting their provisions. Sometimes, the council must secure the approval of the Ministry of Health. In the case of parishes, adoption is possible only after ratification by a meeting of the voters.

*Clauses acts.* A fourth, and now less usual, source of local government power is a kind of act known as a "*clauses act*." In the course of the passage of hundreds of local acts through Parliament, certain kinds of provisions naturally tended to recur; and much experience was gained that suggested the best form a provision could take. Clauses

acts incorporate groups of "model" provisions of this kind. Clauses are, therefore, a variation of general acts. They also, however, resemble adoptive acts in that the local community must take the initiative if it wishes to secure power in this way. The community must promote a local bill containing the model clauses desired. However, in the course of procedure in Parliament, there is no need that such clauses be discussed.

*Provisional orders.* In the last place, local communities may extend their powers through the instrumentality of "*provisional orders*." The final legal source of this power consists of a "provisional order confirmation act." The original power for a minister—normally the Minister of Health—to issue provisional orders is contained in several acts of Parliament. Examples are acts dealing with the compulsory purchase of land, with the regulation of transport or of markets, and with water and gas supply. In practice, the local community takes the first step by making application to the minister for an order. The application is naturally accompanied by certain information. If, on this evidence, the minister rejects the application, the matter ends, unless the community decides to proceed through the promotion of a local bill. The more usual practice is for an inspector to hold on behalf of the minister a local inquiry. Notices must be published in local newspapers; and full opportunity for opposition is afforded. If the minister, on the basis of the report of the inspector, approves the application, he issues the provisional order. Such order, however, does not immediately confer power. It must be sent to Parliament for confirmation. In practice, the minister, towards the end of the session, combines in the schedule of a provisional order confirmation bill the several provisional orders that he has sent to Parliament during the session. When the bill has passed—usually without opposition<sup>51</sup>—through the regularly prescribed parliamentary procedure,<sup>52</sup> the powers provisionally granted in the orders become legally valid.

The principle that local communities in England possess only such powers as are granted by Parliament appears to involve the corollary that the common law cannot confer authority on such communities.

<sup>51</sup> This marks from the point of view of promoters a manifest advantage that proceeding by provisional order possesses over promotion of local bills.

<sup>52</sup> The bill is technically a *public bill*; but the procedure—especially the committee stage—is largely that regularly employed in connection with *private bills*.



In fact, as the result of a series of judicial decisions, this second principle seems now to be well established. At the same time, the boundaries of the powers of local government are traced by both positive and negative legal principles. Local government possesses only such power as results from statutory grant; but, likewise, it must comply with the general law of the country applicable to it. Therefore, the common law, being part of this general law, plays a part in fixing the boundaries of the legal powers of local government.

It is usual to compare and contrast local government, with respect to power, with ordinary private human beings. Similarity exists in a negative sense, difference in a positive. More specifically, local government, like private individuals, must not under penalty violate the general law of the country; and yet, whereas private individuals may of their own volition undertake any activity they please, provided the general law is not violated, local government, it must be repeated, may do only what it is specifically empowered by statute law to do.

*Local government and the principle of ultra vires.* The principle that local government must operate within the limits, positive and negative, of its legal power carries with it, so to say, the possibility that an attempt may be made, consciously or unconsciously, to operate outside these limits. This involves the concept of *ultra vires*. It is a concept on which is based the common distinction between valid and invalid legal activity. If, according to a simple figure of speech, the legal power of any agent or agency of local government is conceived as occupying a certain area defined by established boundaries, then any action that transcends the boundaries is invalid in that it is beyond the authority of the agent or agency, or is *ultra vires*. Indeed, the concept may be employed with somewhat greater precision. An agent or agency of local government may be said to have no existence as an agent or agency of local government except in so far as its structure and activity are defined by legal stipulations; and any activity that is not authorized by law is not, speaking strictly, an activity of the agent or agency. In the eyes of the law, the person or persons involved—and local government, like government in general and like corporations, can act only through human individuals—act in a personal, not a governmental, capacity.

*Sec. 8. Central Control of Local Government*

The extent of the power of English local government is further determined by another consideration, which is of no small importance and interest. This is the question of the control exercised over local government on the part of the central government. A tendency towards the extension of such control undoubtedly exists. This is true in spite of the fact that England is traditionally the home of local self-government. Indeed, not only is English local government in actual fact possessed of wide powers of government, but also a tendency would seem to exist for local government increasingly to be granted as much power as it can possibly be expected profitably to exercise. Hence, the actual authority of English local government must be stated in terms of a balance between two opposing tendencies. Local government is granted increasingly wide powers; but the extent to which it is free to exercise the power granted to it is determined by the amount of control that is actually practised, in deference to the principle that the activities of local government are of concern to the general public and hence to the central government. This control, in practice, is of several kinds.

According to American concepts, control over the activity of local governmental agents and organs is either *legislative* or *administrative* in character. In this country, legislative control is the principal kind encountered in connection with local government. Only a relatively small extension of administrative control has been made. In England, both legislative and administrative control exist, administrative control being especially important and interesting.

*Legislative and judicial control.* The *ultra vires* principle involves of itself a kind of control over local government. If local agents and organs can validly exercise only such powers as are granted to them in statutory enactments, the very establishment of the boundaries of power involves limitation of, and some control over, local government. The enacting authority, the legislature, is clearly in a position, theoretically and potentially, to treat local government in any conceivable way. The legislative authority may act on its own volition; but its control is especially apparent when a local community seeks action from it. On the other hand, if the matter be conceived of, not in the dynamic

terms of some particular direct legislative action, but as a static question of the effect of existing law on local government, a somewhat different consideration is involved. The judicial branch of government is brought into play. Hence, the control involved at this point is sometimes called *judicial control*. It is manifestly not different from legislative control, but rather involved in it. In general, any person who claims to be affected may in effect resist an attempted exercise of power by local government, on the ground that the attempt is *ultra vires*. An issue is raised, which must be determined by the judiciary. The court either agrees or disagrees with the contention that the attempted exercise of power is *ultra vires*. If the court agrees, the position it takes is in effect that, since the court applies only what is law,<sup>53</sup> it must decline to enforce an attempted exercise of power that is in reality not authorized by law. As is well known, this situation may result in considerable political power for the judges. If what are figuratively known as the boundaries of the powers of local government happen at one or more points to be defined by general or vague stipulations, the personal views of the judges tend to be the determining factor. A simple example may be seen in connection with the common law principle that a by-law must be reasonable. If a council passes a by-law which offends some special interest and if that interest protests the validity of the by-law on the ground that it is unreasonable, then whether the action of the council, that is to say, of the representatives of the people, is to prevail, depends on the judges' view of what is reasonable. This manifestly gives to the judges considerable control over governmental policy. The most important safeguard in the matter for the democratic process would seem to be the existence of a body of judges who are strongly reluctant to disallow an expression of will on the part of a responsible body. On the whole, most English judges, though they have by no means always been intelligent in their attitude towards modern problems of local government, appear to subscribe in this respect to the views that have come to be considered

<sup>53</sup> The same general principle is involved in the somewhat technical question of the responsibility of agents and organs of government in respect of injury to person or property. Though modifications have in practice been made by statutory enactment, the general question is whether, when an individual asserts that he has been wronged, the court, on the assumption that injury has in fact occurred, conceives that the wrongdoer was acting in a public or private capacity.

"liberal" in the United States. Some idea of the situation may be had from the following excerpts from an interesting opinion:<sup>54</sup>

. . . When the Court is called upon to consider the by-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned . . . they ought to be supported if possible. They ought to be, as has been said, "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered . . . A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the county, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of by-laws were to be determined by the opinion of judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle or definite standard by which reasonableness or unreasonableness may be tested . . . In my opinion, judged by the test of reasonableness, even in its narrow sense, this is a reasonable by-law; but, whether I am right or wrong in this view, I am clearly of opinion that no Court of law can properly say that it is invalid.

Aside from matters that involve the principle of *ultra vires*, the judiciary in England may exercise control over local government in a somewhat different way. A local agent or organ may, with respect to a power that it possesses beyond any possibility of question, cause objection to be raised on the ground of its *failure* to exercise certain powers. Such powers are what are known as *mandatory* powers, which are to be contrasted with *permissive* powers. Permissive powers, as the expression suggests, are powers that an agent or organ may or may not, at its discretion, exercise, though, of course, in the case of the affirmative, the principle of *ultra vires* applies. On the other hand,

<sup>54</sup> Kruse vs. Johnson, (1898) 2 Q. B. 91. The excerpts are from the opinion of the Chief Justice, Lord Russell of Killowen. For an interesting and instructive discussion of a later case, see H. J. Laski, "Judicial Review of Social Policy in England" in the *Harvard Law Review*, Vol. XXXIX, No. 7 (1926), pp. 832 ff.

mandatory powers, by definition, impose the obligation of their being exercised. It is in the case of failure that the judiciary comes into play.<sup>55</sup> In general, the courts will take one of two lines of action, depending on circumstances. In the first place, statutes that impose duties on local agents or organs not infrequently stipulate that failure to perform the duties shall be punished by fine. This manifestly involves judicial decision. In the second place, *mandamus* may sometimes be employed. Mandamus is a command issued by a court compelling an agent or organ of government to carry out some duty that has been neglected. If no remedy is equally good and injustice would result from its refusal, it must be granted.

Legislative control of local government, with its corollary of judicial control, is commonly regarded as being marked by the general characteristic of lack of flexibility. Such control may also be regarded as displaying several more specific shortcomings, as well in principle as in practice. Thus, in the first place, the tendency has been for local agents and organs to escape being called to task unless some question of property is involved. This is because such control normally comes into play only when some person feels enough concern to take the initiative and to undergo the trouble and expense involved in judicial action. In the second place, judicial action is likely to be dilatory and expensive; and an individual knows that he may be compelled to go through a series of actions in the judicial hierarchy only to lose at the end and to be obliged to pay the costs. And, finally, this control is from its nature ineffective. At best, it operates only when the law has been violated. Though its value in such a case could not and would not be seriously questioned, the fact is that most agents and organs of local government in England are not likely deliberately to break the law. Where they do break it, their action is usually the result of uncertainty as to the law. If they knew in advance what the law was, need for judicial action would be rare. In practice, the interests of the public are affected less by violation of law than by inexpert and inefficient administration of the law. Legislative and judicial control

<sup>55</sup> In theory, the executive branch of the central government could, in certain cases of failure on the part of the local agency to perform a duty, perform the duty itself and, in respect of the expense involved, send the bill, so to say, to the local council. This, however, is not done.

are of little help in that. Because of that shortcoming as well as of others, administrative control has strong claims to consideration.

*Administrative control.* Administrative control by the central government over local government in England has been an important modern development. Though sporadic isolated attempts to establish such control occurred earlier, the phenomenon may, for practical purposes, be regarded as dating from the end of the nineteenth century.<sup>56</sup> In general, administrative control involves some kind of oversight by an executive department of the central government, acting through its agents. The principal example in this respect is the Ministry of Health. This ministry, as has been seen, supplanted in 1919 the Local Government Board, which had been established in 1871. Other departments that are concerned with local government include the Treasury, the Board of Trade, the Board of Education, the Home Office, the Ministry of Pensions, the Ministry of Agriculture and Fisheries, the Ministry of Transport, the Ministry of Labor, the Post Office Department, the Office of Works and Public Buildings, and the Charity Commissioners.

The control of the various departments of the central government over local governments has grown so extensive and pervasive that an account of its operation is little less than a complete account of the operation of local government. Even a mere listing of the activities that may be involved in such control is formidable. In the first place, although English local communities are largely free to select and retain their own agents and organs of government, being in general much more independent in this respect than communities on the Continent of Europe, the approval by the central administration of some appointments must be secured; and, in certain cases, its consent to removal is necessary. In a few cases, for the most part in connection with public health, the Ministry of Health is empowered, if a local agency fails to perform its legal duties, to appoint another agency for the purpose of performing the duty. This control, known as "action in default," which is too direct to be in accordance with English tradition, is not, as has been said, employed in practice; but it serves as a threat which helps to ensure a feeling of obligation on the part of local government. Again, a certain amount of general administrative control

<sup>56</sup> Cf. pp. 4-5, *supra*.

grows out of the connection of the central administration with legislation. Acts of Parliament dealing with local government are, like other acts, carried out by the executive departments. Hence, the well-known modern tendency on the part of Parliament merely to prescribe general principles in statutes, leaving to the executive the power to make subordinate regulations, places in the hands of the departments an effective means of control. Similarly, the seeking by local government of provisional orders involves definite central control. And the fact that a by-law must, as has been seen, receive the sanction of the Minister of Health, the Home Secretary, or other minister, is a striking example of the administrative type of control. Refusal of approval, though it may result from the view of the central administration that the by-law is *ultra vires*, is especially interesting when based on policy, i.e., when the central government raises no question of the council's acting outside its authority, but proceeds on the ground that the by-law is unwise from a national point of view. The central government has the advantage of knowledge derived from the long, rich, and varied experience of all local communities. Indeed, the central government regularly formulates model by-laws which, when adopted by a local community, present the advantage that the approval of the central government is ensured in advance and the by-law is as unlikely as experience can render it to be viewed as *ultra vires* by the courts.

*Inspection of local services.* The characteristic instrumentality of administrative control over local government in England is *inspection*. If the Minister is to be able to act intelligently, he must have information; and the use of inspectors is his principal means of becoming informed. Inspection arose in connection with the administration of the poor law; but its principal application at present is in connection with police and education. There, it is likewise closely connected with grants in aid. His Majesty's inspectors of constabulary and His Majesty's inspectors of schools determine whether local communities are maintaining services at a level of efficiency warranting contribution in aid of those services of funds by the central government. In general, inspectors are full-time paid officials. They apparently give satisfaction, being in most cases persons of experience who act with tact. Their strength lies more in the possibility of what they might do than in positive action. Their advice is usually accepted; and their visits



normally are regarded as occasions for securing information concerning effective administration elsewhere. Some inspectors make regular routine series of visits to local communities, whereas others undertake special investigations. In the latter respect, inspection frequently involves the holding of inquiries, which, in general, may be listed as another means of administrative control. Examples of the employment of this instrument may be found in connection with alterations of boundaries, with borrowing, and with complaints about administration. The Local Government Act of 1933 devotes several sections to the holding of such inquiries. The authority to proceed in this manner is conferred by the following provision:

When any department are authorized by this Act to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, confirmation, sanction or approval to any matter, or otherwise to act under this Act, and where the Secretary of State or the Minister is authorized to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, they or he may cause a local inquiry to be held.

Other provisions authorize the calling of witnesses, the demanding of documents, and the like. Furthermore, a special provision deals with the matter of expense:

Where a department cause any such inquiry to be held, the costs incurred by them in relation to that inquiry (including such reasonable sum not exceeding five guineas a day as they may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as the department may direct, and the department may certify the amount of the costs so incurred, and any amount so certified and directed by the department to be paid by any authority or person shall be recoverable from that authority or person either as a debt to the Crown or by the department summarily as a civil debt.

The general principle of inquiries is the same as that involved in inspection, namely, that control should be based on knowledge of conditions. This principle likewise applies to other methods of control, namely, the requiring of reports, the gathering of statistics, and the like.

Another form of administrative control of local government involves *advice*. Thus, various circulars, especially those dealing with



new powers or duties, are frequently sent from the central government to local agents and organs. Moreover, numerous advisory bodies have been established by the central administration; and these, through consultation and research, acquire information that is of much value to local communities. And, then, as has been seen, inspectors offer advice which agents and organs of local government are not likely to leave unheeded.

Several aspects of the administrative control of local government are naturally connected with finance. Indeed, the power of the purse is the ultimate sanction that lies behind almost all control. Thus, the potential control implicit in granting or withholding subsidies, including the stipulation of standards that must be met and entailing inspection as a natural accompaniment, is manifest. The practice in connection with police is an important example. Again, administrative control results from the fact that all local loans, unless special power is secured directly from Parliament, must be authorized by the central administration.<sup>57</sup> This is often cited as an example of the greater flexibility of administrative control as compared with the kind of legislative control that prevails in this country. Thus, in the United States, legislative control of local loans typically takes the form of a statutory limitation on the amount of local indebtedness. Once the limit is reached, further loan is, in the absence of a change in the law, impossible. The fact is irrelevant that the borrowing undertaken before the limit is reached may be far from wise and the borrowing desired after the limit is reached may be altogether commendable. On the other hand, administrative control of local loans involves consideration of each loan on its own merits. A central executive authority, in coming to a conclusion, consults the general interest of the country and draws on an accumulated experience in respect to all kinds of loans. In case of refusal on the part of the central government, a local community may confidently console itself with the reflection that the proposed loan would have been a mistake. Finally, in all cases but a few, local government accounts must be audited by agents of the central administration.<sup>58</sup> The control here is primarily one over dishonesty and illegality of local expenditure; but, as such, it is of very great impor-

<sup>57</sup> Cf. pp. 52-54, *supra*.

<sup>58</sup> Cf. pp. 59-63, *supra*.

tance. Moreover, though the wisdom of expenditure is in principle outside control by audit, decisions may at times appear to come very close to involving policy.<sup>59</sup>

In the last place, some administrative control over local government derives from certain appellate authority possessed by central executive departments in connection with a limited amount of quasi-judicial power belonging to local agents and organs. Where an individual, for example, in a matter like that of building a reservoir, objects to action by a local agency and appeals from a decision made locally concerning the objection, settlement is made by the Ministry of Health. The whole situation is the subject of much controversy, being one aspect of a tendency towards the development in England of a body of administrative law.

In any contrast of England and the United States with respect to central control of local government, importance attaches to remembering that the existence in England of the parliamentary system of government, with its characteristic feature of ministerial responsibility, is a principal consideration in the matter. It is not, doubtless, a complete explanation of all differences; but it is of much moment. The heads of central executive departments, being ministers, are responsible to the House of Commons, where a critical and vigorous opposition, it may be presumed, would welcome any discovery of abuse in connection with administrative control over local government. Hence, the control is exercised in conditions of political democracy that are not present in the same way in a democratic government which is not organized on the parliamentary model.

### *Sec. 9. Local Functions and Administration*

*The expansion of functions.* The practices of local government are of transcendent interest and of inestimable value in connection with the ancient and final problem of political science, namely, the reconciliation of liberty and authority. The question of what activities ought to be undertaken by governmental authority may, because of advantages of perspective, be viewed as a whole more easily when envisaged on a local scale. English local government, particularly, presents advan-

<sup>59</sup> This question was the occasion for the controversy alluded to in note 54, p. 74, *supra*.

tages in this respect. Long experience in England with problems of government, unbroken by the disrupting upheavals of revolution, has produced a vast store of material for study that deserves to be pondered. Moreover, since the general conditions of political democracy, with wide participation by the citizens in government, prevail in English local government, the result is that where various activities have been made functions of public authority, with the consequent lessening of the amount of liberty for the individual, the decision has, on the whole, represented the movement of public opinion.

An examination of the various public services performed by local government in England at the present day would involve a long account of the whole matter of local administration, many of the aspects of which are vast subjects in themselves. On the other hand, such administration, viewed in its general outlines, is an interesting indication of the wide scale on which modern governmental authority is employed. More especially, it presents striking evidence, when envisaged in historical perspective, of a general tendency away from the older individualist concept of the proper sphere of state action towards a more social or socialist view.

The line functions of present-day local government in England show that extreme individualism has been left far behind. These functions, or, as is frequently said in England, the *services provided*, cover a wide range of items extending from police to roads, health, public assistance, education, and trading. Police—and that in a much narrower sense than the one in which the term is at present used—is probably the only one of these activities that can be justified on strict individualist grounds. And yet, if the fact be remembered that the several activities were not all undertaken for the first time at one period, it may be understood that each new function appeared at the time to be a natural extension of some function already performed. Since, as a consequence, the process of growth was a relatively slow one, it is only when somewhat widely separated points in the process are viewed in relation to each other that the broad extent of the socialization of government is clearly manifest. Protection of individuals in their person and property against enemies like murderers, housebreakers, and incendiaries was gradually extended to include protection against enemies like ignorance and disease. The great functions of education and public

health mark this kind of development. An interesting symbol of this is to be found in connection with central control. The Ministry of Health is now the principal agency of the central government concerned with local government. Moreover, protection in its more negative aspect, that is, protection after the fact, tended to develop into a positive protection that takes measures aimed at the causes of danger. Positive action has involved a situation in which government *provides* things; and the advantages of coöperative action, that is to say, governmental action, as compared with private enterprise have become manifest in various respects. Roads are an example here. And then, once the service of providing things has become accepted, the ground is laid for the whole field of public assistance. Finally, the furnishing of luxuries like opera houses, golf links, and swimming pools is, together with the public ownership and operation of such things as markets, gas and electric plants, and street-car lines, an example of what is called *trading*. This is in England frankly admitted to be socialism.

When the problem of the reconciliation of liberty and authority is expressed in terms of public interest versus individual interest, the statement is over abstract. Since the relationship is one of real, rather than abstract, individuals to a given community, rather than to an abstract society, answers to the question of the proper functions of government depend on whether the government contemplated is the central government or local government. So also, the question and answer differ in respect to the several types of local government. In general, the actual distribution of powers in England<sup>60</sup> is, as might be imagined, one in which counties and county boroughs possess the most extensive local power, the parishes the least extensive. In fact, the parishes possess very little power. The counties exercise wide powers with respect to police, education, public health, roads, and public assistance. The county boroughs possess all these powers and, in addition, power with respect to trading. The larger municipal boroughs sometimes exercise, instead of the county, power with respect to police and, more often, power with respect to education at the elementary level. In general, municipal boroughs possess powers with respect to public health, roads of a secondary character, and trading. The general

<sup>60</sup> Cf., in this respect, Finer, *op. cit.*, p. 34.

and exceptional powers of urban districts are largely the same as those of municipal boroughs, except that they exercise no power in connection with police. Rural districts possess somewhat less power than urban districts with respect to everything except public health. They exercise no power with respect to police, none with respect to education, very little with respect to roads, and not much with respect to trading.

*Administrative organization.* Application of biological analogy to government suggests that the relationship between structure and function is reciprocal. Each in turn affects and is affected by the other. Thus, the departmental organization that is to be found in the several types of local government in England is naturally much influenced by the line functions that are performed. Staff functions, it is true, exercise some influence; but this influence is by no means so great as that exercised by line functions. The effect of function on organization is manifested in two simple ways. In the first place, the complexity of organization varies as between the kinds of local communities. Thus, counties and county boroughs possess the most elaborate departmental arrangements, parishes the simplest. The organizations of municipal boroughs, urban districts, and rural districts normally shade from more to less complex. In the second place, the organization of different communities in the same class vary in complexity with the extent of the line functions performed.

Staff functions may be considered responsible for the existence of two departments in local government. These are the clerk's department and a department that is concerned with finance. Such departments exist in every community that possesses a staff of administrative agents sufficiently large to be organized into departments. The clerk's department has at its head, according to circumstances, a town clerk or clerk to the council and, in rare cases, a clerk accountant. In larger departments of this kind, the organization will include other professional and technical officers in the form of a deputy clerk and assistant solicitors; and there will be such administrative and clerical officials as law clerks, committee clerks, licensing clerks, and registration clerks, together with administrative assistants and shorthand typists. The department that is concerned with finance is a department headed by a treasurer or accountant. Professional officers may include a deputy and several accountants, whereas administrative and clerical officials

may include rate collectors, cashiers, rental clerks, audit clerks, general clerks, bookkeepers, and shorthand typists.

The remaining departments that are found in the administrative organization of English local government are determined by the line functions performed. Thus, in counties and county boroughs, and in such municipal boroughs as are concerned with the function, police departments exist. The technical head of the department is the chief constable.<sup>61</sup> Other officers include superintendents, inspectors, sergeants, and constables.<sup>62</sup> There is, of course, an administrative and clerical force. Fire brigades, though sometimes independent, are frequently, in accordance with the view that fire protection is a part of the function of police, placed under the control of the chief police officer. Such brigades, it may be noted, are also to be found in urban districts and in municipal boroughs that are without their own police departments. A department concerned with public health is found throughout the range of local communities, and a department of education is found where authority to perform that function exists. The head of a department of public health is the medical officer of health. Subordinate to him are such technical and professional officials as a deputy and various assistant medical officers, analysts, sanitary inspectors, health visitors, and nurses, and a staff of general clerks and shorthand typists. A department of education has at its head a director of education. There is also either a deputy or a secretary for education. Other officials include school medical officers, school dentists, and inspectors. There is an administrative and clerical force, including, along with clerks and the other usual agents, school attendance officers. Departments likewise exist, where the power is lodged, for purposes of highways and public assistance, though the name may vary. The first is under the engineer and surveyor, the second under the public assistance officer. Each has a deputy. Technical and professional highway officials include highway surveyors, building surveyors, assistant engineers, architects, and town planning assistants; public health officials of a technical and professional class are clerks to guardians committees, medical superin-

<sup>61</sup> The head of police in the City of London is the Commissioner of City of London Police, and in the Metropolitan Police District the Commissioner of Police of the Metropolis.

<sup>62</sup> There are also parish constables.

tendents, and institutional and district medical officers. Both departments have somewhat elaborate administrative and clerical forces.

Beyond the clerk's and treasurer's departments and the departments of police, public health, education, highways, and public assistance, departmental organization displays considerably more variation. An important determining factor is the extent to which trading is found. Typical departments concerned with functions that fall in this category are departments of electricity, of gas, of water, and of transport. The head of one of the first three is the engineer and manager, of a department of transport the general manager. The professional and technical forces and the administrative and clerical forces are, in general, those that are found where such undertakings are owned and operated by private enterprise. Other departments that may be listed, the names varying here as well, include those of markets, of weights and measures, of libraries, of museums and art galleries, and of parks and cemeteries.

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The world tendency towards the socialization of government is generally recognized to involve a tendency towards centralization that is not without its dangers. And yet the maintenance of a substantial degree of decentralization and of local self-government is a matter of the greatest importance. The success with which the problems involved are solved in England, with its undoubted genius for government and its long tradition for self-government, will deserve to receive, and will doubtless receive, the interested and sympathetic attention of the democratic world.

At the present day, any description of the extension of central control over local government in England and any account of the existing system tend to leave the impression of a high degree of centralization. This is distinctly misleading. Danger no doubt exists; but the existence of the danger is recognized, and enlightened opinion is frequently asserting that the principle of local self-government must be carefully guarded. The extension of central control and the tendency for matters once considered local in character to be regarded as of general concern are, on the other hand, matched, as has been said, by a tendency for as much power to be devolved upon local government as it can possibly be expected profitably to exercise. Of the wide powers



actually possessed, many of them are such that local communities may exercise them or not, as they see fit. Local government is based solidly on the voters in their capacity as members of local communities; and these voters, in their capacity as members of the general community, likewise possess ultimate authority over the central government. The voters, in the first capacity, choose the principal agencies of local government. In their second capacity, they are not so far removed from the practical exercise of central control that this control cannot be thought of as coöperation between the general community and local communities. Local government is almost without restrictions in determining its internal structure; and, in respect of its functions, it need have little fear of outside interference so long as its accomplishments do not fall short of a certain minimum. In fine, England continues to be the foremost example and the principal model of a country in which genuine local self-government flourishes.

## BIBLIOGRAPHY

### 1. DOCUMENTS

The materials of a documentary character on English local government consist of acts of Parliament, reports of royal commissions, and various other official publications. The most important are mentioned in the text or notes of this chapter, *supra*.

### 2. BOOKS

The books dealing with English local government are countless. In the first place, general works on English government usually contain some treatment of local government. At the other end, exceedingly numerous books exist that deal with technical aspects of local government and administration, especially with various aspects of line functions. Between these extremes stand books on English local government in general or on aspects of staff or overhead functions. The following list, which lays no claim to being exhaustive, contains the best known works falling in the middle category:

- Arnold's *Municipal Corporations* (London, 7th ed. by F. C. Minshall, 1935)  
Ashford, E. B., *Local Government* (London, 1929)  
Atkinson, C. J. F., *Handbook of Local Government Law* (London, 4th ed., 1933)  
Attlee, C. R. and Robson, W. A., *The Town Councillor* (London, 1925)



- Cannan, E., *History of Local Rates in England* (London, 1912)
- Carter, C. H., *The Local Government Act, 1888* (London, 1924)
- Clarke, J. J., *The Local Government of the United Kingdom (and the Irish Free State)* (London, 10th ed., 1936)
- Clarke, J. J., *Outlines of Local Government of the United Kingdom (and the Irish Free State)* (London, 13th ed., 1938)
- Crew, A., *Rates and Rating* (London, 8th ed., 1935)
- Eyles, W. E., *Parliamentary and Local Government Elections* (London, 1936)
- Finer, H., *English Local Government* (New York, 1934)
- Harris, P. A., *London and Its Government* (London, 1933)
- Hart, W. and Hart, W. O., *Introduction to the Law of Local Government and Administration* (London, 1934)
- Hasluck, E. L., *Local Government in England* (Cambridge, 1936)
- Hill, L., *The Local Government Officer* (London, 1938)
- Jenks, E., *English Local Government* (London, 7th ed., 1930)
- Jennings, W. I., *Principles of Local Government Law* (London, 1931)
- Jennings, W. I., *Local Government in the Modern Constitution* (London, 1931)
- Jennings, W. I., *The Law Relating to Local Authorities* (London, 1934)
- Laski, H. J., Robson, W. A., and Jennings, W. I., *A Century of Municipal Progress, 1835-1935* (London, 1935)
- Mackenzie's *Rating and Valuation Officers' Handbook* (London, 10th ed., 1932)
- Macmillan, Lord, and Others, *Local Government Law and Administration* (Vols. I-VI, London, 1934)
- Maud, J. P. R., *Local Government in Modern England* (London, 1932)
- Redlich and Hirst, *Local Government in England* (2 vols., London, 1903)
- Robinson, G. E., *Public Authorities and Legal Liability* (London, 1925)
- Robson, W. A., *The Development of Local Government* (London, 1931)
- Rose, H. T., *English Local Government Law* (London, 1938)
- Simon, E. D., *A City Council from Within* (London, 1926)
- Taylor, A. R., and Moss, J., *Local Government Act, 1933* (London, 1934)
- Webb, S., *Grants in Aid* (London, 1920)
- Webb, S. and B., *English Local Government* (9 vols., London): Vol. 1, *The Parish and the County* (1906); Vols. 2 and 3, *The Manor and the Borough* (1924); Vol. 4, *Statutory Authorities for Special Purposes* (1922); Vol. 5, *The Story of the King's Highway* (1920); Vol. 6, *English Prisons under Local Government* (1922); Vols. 7, 8 and 9, *English Poor Law History* (1927-1929)
- Wright, R. S., and Hobhouse, H., *Local Government and Local Taxation in England and Wales* (London, 6th ed., 1929)

## 3. PERIODICALS

The following English periodicals are of high importance for the study of local government:

*County Councils Association Gazette*  
*Justice of the Peace and Local Government Review*  
*Local Government Chronicle*  
*Local Government Journal and Officials' Gazette*  
*Municipal Journal*  
*Municipal Review*  
*Public Administration*

## PART II. FUNDAMENTAL DOCUMENTS:

EXTRACTS FROM THE LOCAL GOVERNMENT ACT, 1933.<sup>1</sup>

## 23 &amp; 24 Geo. 5, c. 51.

[Only the parts that seemed most important have been retained in this reprint. The reader will understand that parts of sections, whole sections, and all the materials in the schedules have been omitted, in most cases without any notation to show how many subsections or sections have been left out. The numbering is not, therefore, always consecutive. Minor omissions have been shown by periods (. . .). Where whole sections have been omitted, asterisks (\* \* \*) have been used.]

An Act to consolidate with amendments the enactments relating to authorities for the purposes of local government in England and Wales exclusive (except in relation to certain matters) of London.<sup>2</sup>

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—<sup>3</sup>

<sup>1</sup> This is known as the *Short Title* of the Act. V. s. 308, *infra*. This great act became law on November 17, 1933. Its 308 sections extend to 184 pages, and its eleven schedules to 96 pages, more finely printed; so that the complete act covers 280 pages. An act of Parliament is authoritatively printed by the King's Printer, and may be purchased separately from H. M. Stationery Office. Acts in the same authoritative form are to be found also in bound volumes. The annual volume of public acts is known as *Public General Acts*. It may likewise be purchased from H. M. Stationery Office. The volume forms also a part of *The Law Reports*, in this case bearing the sub-title *Statutes*. A convenient place in which to find topically any unrepealed statutory provisions is *The Complete Statutes of England Classified and Annotated in Continuation of Halsbury's Laws of England*.

<sup>2</sup> This is known as the *Long Title* of the Act.

<sup>3</sup> This is the *Enacting Clause*.

## Part I.—Constitution and Elections.

## Local Government Areas.

1.—(1) For the purposes of local government, England and Wales (exclusive of London) shall be divided into administrative counties and county boroughs, and administrative counties shall be divided into county districts, being either non-county boroughs, urban districts or rural districts, and county boroughs and county districts shall consist of one or more parishes . . .

(3) Every county borough shall, with respect to the functions which the council of the borough discharge, form a separate administrative area.

## Administrative Counties.

*Constitution of County Councils.*

2.—(1) For every administrative county there shall be a county council consisting of the chairman, county aldermen and county councillors, and the council shall have all such functions as are vested in the county council by this Act or otherwise.

(2) The county council shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to hold land for the purposes of their constitution without licence in mortmain.

*Chairman and Vice-Chairman of County Council.*

3.—(1) The chairman of a county council shall be elected annually by the county council from among the county aldermen or county councillors or persons qualified to be county aldermen or county councillors.

\* \* \*

*County Aldermen.*

6.—(1) The county aldermen shall be elected by the county council from among the county councillors or persons qualified to be county councillors.

(2) The number of county aldermen shall be one-third of the whole number of county councillors or, if that number is not divisible by three, one-third of the highest number below that number which is divisible by three . . .

(3) If a county councillor is elected to and accepts the office of county alderman, his office of county councillor shall thereupon become vacant.

(4) In every third year, being the year in which county councillors are elected, one half as near as may be of the whole number of county

aldermen, being those who have been county aldermen for the longest time without re-election, shall retire immediately after the election of the new county aldermen, and their places shall be filled by the newly elected county aldermen who shall come into office on that day. \* \* \*

#### *County Councillors.*

8.—(1) The county councillors shall be elected by the local government electors for the county in manner provided by this Act.

(2) The term of office of county councillors shall be three years, and they shall retire together in every third year, on the eighth day of March, and their places shall be filled by the newly-elected councillors, who shall come into office on that day. \* \* \*

#### *Election of County Councillors.*

10. For the purpose of the election of county councillors, every county shall be divided into electoral divisions, each returning one councillor, and there shall be a separate election for each electoral division. \* \* \*

12.—(1) The persons entitled to vote at an election of a county councillor shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.

(2) No person shall give more than one vote at an election of a county councillor.

13. The county council may divide an electoral division into polling districts, and may alter any polling district.

14.—(1) The county council shall appoint a person to be the county returning officer, and if at an election of a county councillor the office of county returning officer is vacant, or the county returning officer is for any reason unable to act, the chairman of the county council shall forthwith appoint another person to be the county returning officer at that election. \* \* \*

#### *Boroughs.*

##### *Constitution.*

17.—(1) The municipal corporation of a borough shall be capable of acting by the council of a borough and shall—

- (a) in the case of a borough being a city, the mayor of which is entitled to bear the title of lord mayor, bear the name of the lord mayor, aldermen and citizens of the city;
- (b) in the case of any other borough being a city, bear the name of the mayor, aldermen and citizens of the city; and
- (c) in the case of any other borough, bear the name of the mayor, aldermen and burgesses of the borough.

(2) The council of a borough shall consist of the mayor, aldermen and councillors and shall exercise all such functions as are vested in the municipal corporation of the borough or in the council of the borough by this Act or otherwise.

(3) The municipal corporation of a borough shall have power to hold land for the purposes of their constitution without licence in mortmain.

#### *The Mayor.*

18.—(1) The mayor shall be elected annually by the council of the borough from among the aldermen or councillors of the borough or persons qualified to be aldermen or councillors of the borough.

(2) The term of office of the mayor shall be one year, but he shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor becomes entitled to act as mayor.

(3) During his term of office, the mayor shall continue to be a member of the council, notwithstanding the provisions of this Act relating to the retirement of councillors of a borough at the end of three years.

(4) The council may pay to the mayor such remuneration as they think reasonable. \* \* \*

#### *Aldermen.*

21.—(1) The aldermen of a borough shall be elected by the council of the borough from among the councillors or persons qualified to be councillors of the borough.

(2) The number of aldermen shall be one-third of the whole number of councillors.

(3) If a councillor is elected to, and accepts the office of, alderman of the borough, his office of councillor shall thereupon become vacant.

(4) The term of office of an alderman of a borough shall be six years, and one half, as near as may be, of the whole number of aldermen, being those who have been aldermen for the longest time without re-election, shall retire in every third year immediately after the election of the new aldermen, and their places shall be filled by the newly elected aldermen who shall come into office on that day.

22.—(1) The ordinary election of aldermen shall be held in every third year at the annual meeting of the council, and shall take place immediately after the election of the mayor, or, if there is a sheriff, after the appointment of the sheriff.

(2) An alderman shall not, as such, vote at the election of an alderman of the borough . . .

*Councillors.*

23.—(1) The councillors of a borough shall be elected by the local government electors for the borough in manner provided by this Act.

(2) The term of office of the councillors of a borough shall be three years, and one third of the whole number of councillors of the borough or of each ward thereof, as the case may be, being those who have been councillors for the longest time without re-election, shall retire in every year on the first day of November and their places shall be filled by the newly elected councillors who shall come into office on that day.

(3) The ordinary day of election of councillors shall be the first day of November.

*Election of Councillors.*

24.—(1) Where a borough is not divided into wards, there shall be one election of councillors for the whole borough.

(2) Where a borough is divided into wards, there shall be a separate election of councillors for each ward. \* \* \*

26.—(1) The persons entitled to vote at an election of councillors of a borough shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.

(2) Every elector may give one vote and no more for each candidate: Provided that the total number of votes which he may give shall not exceed the number of councillors to be elected.

27. The council of a borough may divide the borough or any ward thereof into polling districts, and may alter any polling district. \* \* \*

*Urban and Rural Districts.**Constitution of District Councils.*

31.—(1) For every urban district there shall be an urban district council consisting of the chairman and councillors, and the council shall have all such functions as are vested in the urban district council by this Act or otherwise.

(2) The urban district council shall be a body corporate by the name of the urban district council with the addition of the name of the urban district, and shall have perpetual succession and a common seal and power to hold land for the purposes of their constitution without licence in mortmain.

32.—(1) Subject to the provisions of this Act, for every rural district there shall be a rural district council consisting of the chairman and councillors, and the council shall have all such functions as are vested in the rural district council by this Act or otherwise.

(2) The rural district council shall be a body corporate by the name of the rural district council with the addition of the name of the rural district, and shall have perpetual succession and a common seal and power to hold land for the purposes of the constitution without licence in mortmain.

*Chairman and Vice-Chairman of District Council.*

33.—(1) The chairman of a district council shall be elected annually by the council from among the councillors or persons qualified to be councillors of the district . . . \* \* \*

*District Councillors.*

35.—(1) The councillors of an urban district shall be called "urban district councillors" and the councillors of a rural district shall be called "rural district councillors."

(2) The councillors for each urban or rural district shall be elected by the local government electors for the district in manner provided by this Act.

(3) The term of office of district councillors shall be three years, and one-third, as near as may be, of the whole number of councillors of the district or, in the case of an urban district divided into wards, of each ward, being those who have been district councillors for the longest time without re-election, shall retire in every year on the fifteenth day of April, and their places shall be filled by the newly elected councillors who shall come into office on that day . . .

*Election of District Councillors.*

36.—(1) Where an urban district is not divided into wards, there shall be one election of councillors for the whole district.

(2) Where an urban district is divided into wards, there shall be a separate election of councillors for each ward. \* \* \*

38.—(1) Rural district councillors shall be elected for the several areas into which the district is divided for the purpose of the election of rural district councillors, being either parishes, or combinations of parishes, or wards of parishes . . .

39.—(1) The persons entitled to vote at an election of district councillors shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.

(2) Every elector may give one vote and no more for each candidate: Provided that the total number of votes which he may give shall not exceed the number of councillors to be elected. \* \* \*

## Rural Parishes.

*Constitution of Parish Meetings and Parish Councils.*

43.—(1) For every rural parish there shall be a parish meeting, and, subject to the provisions of this Act, for every rural parish or group of parishes having a parish council immediately before the commencement of this Act there shall continue to be a parish council.

(2) If a rural parish has not a separate parish council, the county council shall by order establish a parish council for that parish—

- (a) if the population of the parish is three hundred or upwards; or
- (b) if, in the case of a parish having a population of two hundred or upwards but under three hundred, the parish meeting of the parish so resolve,

and the county council may, in the case of a parish having a population of less than two hundred, by order establish a parish council for that parish if the parish meeting so resolve . . . \* \* \*

47.—(1) The parish meeting of a rural parish shall consist of the local government electors for the parish . . .

48.—(1) A parish council shall consist of the chairman and parish councillors, and shall have all such functions as are vested in the council by this Act or otherwise.

(2) The parish council shall be a body corporate by the name of the parish council with the addition of the name of the parish or, if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession and power to hold land for the purposes of their constitution without licence in mortmain . . .

*Chairman and Vice-Chairman of Parish Council or Meeting.*

49.—(1) The chairman of a parish council shall be elected annually by the council from among the councillors or persons qualified to be councillors of the parish . . .

*Parish Councillors.*

50.—(1) The number of parish councillors for each parish, or group of parishes, shall be such number, not being less than five nor more than fifteen, as may be fixed from time to time by the county council.

(2) The term of office of parish councillors shall be three years, and they shall retire together on the fifteenth day of April in the year nineteen hundred and thirty-seven, and on the fifteenth day of April in every third year thereafter, and their places shall be filled by the newly elected councillors who shall come into office on that day.



*Election of Parish Councillors.*

51.—(1) Subject to the provisions of Part II of this Act, parish councillors shall be elected at a parish meeting, or at a poll consequent thereon . . . \* \* \*

53.—(1) The persons entitled to vote at an election of parish councillors shall be the persons entitled by virtue of the Representation of the People Acts to vote at that election.

(2) Every elector may give one vote and no more for each candidate:

Provided that the total number of votes which he may give shall not exceed the number of councillors to be elected. \* \* \*

Part II.—General Provisions as to Members and Meetings of Local Authorities and Elections.

*Qualifications for Office.*

57. A person shall, unless disqualified by virtue of this Act or any other enactment, be qualified to be elected and to be a member of a local authority if he is of full age and a British subject, and—

- (a) he is a local government elector for the area of the local authority; or
- (b) he owns freehold or leasehold land within the area of the local authority; or
- (c) he has during the whole of the twelve months preceding the day of election resided in the area of the local authority; or
- (d) in the case of a member of a parish council, he has either during the whole of the twelve months preceding the day of election or since the twenty-fifth day of March in the year preceding the year of election resided either in the parish or within three miles thereof.

58. A person ceasing to hold any office to which he is elected under this Act, shall, unless he is not qualified or is disqualified, be eligible for re-election. \* \* \*

Part III.—Committees and Joint Committees.

*General Power of Local Authorities to Appoint Committees.*

85.—(1) A local authority may appoint a committee for any such general or special purpose as in the opinion of the local authority would be better regulated and managed by means of a committee, and may

delegate to a committee so appointed, with or without restrictions or conditions, as they think fit, any functions exercisable by the local authority either with respect to the whole or a part of the area of the local authority, except the power of levying, or issuing a precept for, a rate, or of borrowing money.

(2) The number of members of a committee appointed under this section, their term of office, and the area, if any, within which the committee is to exercise its authority, shall be fixed by the local authority.

(3) A committee appointed under this section (other than a committee for regulating and controlling the finance of the local authority or of their area) may include persons who are not members of the local authority:

Provided that at least two-thirds of the members of every committee shall be members of the local authority.

*Finance Committees of County Councils,  
Parochial Committees, &c.*

86.—(1) A county council shall appoint a finance committee consisting of such number of members of the council as they think fit for regulating and controlling the finance of the county, and shall fix the term of office of the members of the committee.

(2) Subject to the provisions of any enactment relating to the standing joint committee or to any other statutory committee, no costs, debt or liability exceeding fifty pounds shall be incurred by a county council except upon a resolution of the council passed on an estimate submitted by the finance committee. \* \* \*

*Joint Committees.*

91.—(1) A local authority may concur with any one or more other local authorities in appointing from amongst their respective members a joint committee of those authorities for any purpose in which they are jointly interested, and may delegate to the committee, with or without restrictions or conditions, as they think fit, any functions of the local authority relating to the purpose for which the joint committee is formed, except the power of levying, or issuing a precept for, a rate, or of borrowing money . . .

(2) Subject to the provisions of this section, the number of members of a joint committee appointed under this section, the term of office of the members thereof, and the area, if any, within which the joint committee is to exercise its authority, shall be fixed by the appointing authorities . . . \* \* \*

## Part IV.—Officers.

*County Officers.*

98. Every county council shall appoint a fit person to be clerk of the county council, but before appointing a person to fill that office the council shall ascertain whether he would be willing to accept the office of clerk of the peace of the county, and shall have regard to his fitness to perform the duties of that office, and shall for that purpose consult the chairman, or, in his absence, the deputy chairman, of quarter sessions for the county.

99.—(1) Every county council shall pay to the clerk of the council such reasonable salary as may be determined by the council, subject to the approval of the Minister . . .

100.—(1) The clerk of a county council shall, subject to the provisions of this section, hold office during the pleasure of the council, so, however, that he shall not be dismissed from his office without the consent of the Minister . . . \* \* \*

102.—(1) Every county council shall appoint a fit person to be the county treasurer, and may pay to the person so appointed such reasonable remuneration as they may determine.

(2) The county treasurer shall hold office during the pleasure of the county council . . .

(4) The offices of clerk of the county council and county treasurer shall not be held by the same person or persons who stand in relation to one another as partners or as employer and employee.

103.—(1) Every county council shall appoint one or more fit persons to be county medical officer or officers of health, and may pay to every person so appointed such reasonable salary as they may determine.

(2) A person shall not be appointed a county medical officer of health, unless he is a duly qualified medical practitioner and is registered in the medical register as a holder of a diploma in sanitary science, public health, or state medicine.

(3) A county medical officer of health shall not be appointed for a limited period only but shall hold office during the pleasure of the county council, so, however, that he shall not be dismissed from his office without the consent of the Minister.

(4) A county medical officer of health shall perform such duties as may be prescribed, and such other duties as may be assigned to him by the county council.

(5) A county medical officer of health shall, for the purposes of his duties, have the same powers of entry on premises as are conferred on a medical officer of health of a county district.

(6) A county medical officer of health shall not engage in private practice, and shall not hold any other public appointment without the consent of the Minister.

(7) Regulations made under this section shall be laid before Parliament as soon as may be after they are made.

104.—(1) Every county council shall appoint a fit person to be county surveyor, and may pay to the person so appointed such reasonable remuneration as they may determine.

(2) A county surveyor shall hold office during the pleasure of the county council.

(3) A county surveyor shall perform such duties as may be determined by the county council.

105.—(1) Every county council shall appoint such other officers as the council think necessary for the efficient discharge of the functions of the council.

(2) A county council may pay to an officer appointed under this section such reasonable remuneration as they may determine, and every such officer shall hold office during the pleasure of the council . . .

#### *Municipal Officers.*

106.—(1) The council of every borough shall appoint fit persons to be town clerk, treasurer, surveyor, medical officer of health and sanitary inspector or inspectors, and shall also appoint such other officers as the council think necessary for the efficient discharge of the functions of the council . . .

(5) The offices of town clerk and treasurer shall not be held by the same person or by persons who stand in relation to one another as partners or as employer and employee . . .

#### *Officers of Urban and Rural District Councils.*

107.—(1) Every district council shall appoint fit persons to be clerk of the council, treasurer, surveyor, medical officer of health and sanitary inspector or inspectors, and shall also appoint such other officers as the council think necessary for the efficient discharge of the functions of the council:

Provided that a rural district council need not appoint a surveyor and may, if they think fit, appoint more than one medical officer of health . . .

(4) The offices of clerk of the council and treasurer shall not be held by the same person or by persons who stand in relation to one another as partners or as employer and employee.

*Borough and District Medical Officers of Health  
and Sanitary Inspectors.*

108.—(1) The Minister may by regulations prescribe—

- (a) the qualifications to be held and the duties to be performed by medical officers of health of boroughs and urban and rural districts;
- (b) the mode of appointment and terms as to salary and tenure of office of medical officers of health and sanitary inspectors of boroughs and urban and rural districts, and the qualifications and duties of such sanitary inspectors . . .

(3) A person shall not be appointed a medical officer of health of a borough or urban or rural district unless, in addition to holding the qualifications prescribed under this section—

- (a) he is a duly qualified medical practitioner; and,
- (b) in the case of a borough or urban or rural district having a population of fifty thousand or more, he is also registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine.

(4) A medical officer of health of a borough or urban or rural district shall perform such duties as may be prescribed under this section, and may exercise any of the powers with which a sanitary inspector is invested.

(5) Regulations made under this section shall be laid before each House of Parliament as soon as may be after they are made. \* \* \*

*Parish Officers.*

114.—(1) A parish council may appoint one of their number to be clerk of the council without remuneration.

(2) If no member of the council is so appointed, the council may appoint some other fit person to be their clerk with such reasonable remuneration as they may determine.

(3) Where a parish council act as a parochial committee by delegation from the rural district council, they shall be entitled whilst so acting to the services of the clerk of the rural district council, unless the district council otherwise direct.

(4) A parish council may appoint one of their own number or some other fit person to be treasurer, without remuneration. \* \* \*

Part VI.—Alteration of Areas.

*Creation of Municipal Boroughs.*

129.—(1) If, on a petition presented to His Majesty by the council of an urban or rural district praying for the grant of a charter of incorpora-

tion, His Majesty, by the advice of His Privy Council, thinks fit by charter to create the district or any part thereof with or without any adjoining area or borough, and to incorporate the inhabitants thereof, it shall be lawful for His Majesty by the charter to extend to that borough and the inhabitants thereof so incorporated the provisions of this Act relating to boroughs . . . \* \* \*

*Creation of County Boroughs.*

139. The council of a borough shall not promote a Bill for the purpose of constituting the borough a county borough, unless the population of the borough is seventy-five thousand or upwards. \* \* \*

*Review of Areas by County Councils.*

146.—(1) At any time after the expiration of ten years from the completion by a county council of the first review of their county under section forty-six of the Local Government Act, 1929, the county council may, whenever they think it desirable, and shall, if so required by the Minister, within such time as the Minister may allow, after conferences with representatives of the councils of the several county districts wholly or in part situate within the county, review the circumstances of all such county districts and consider whether it is desirable to effect any . . . changes . . .

(8) The interval between any two reviews under this section shall in no case be less than ten years. \* \* \*

*Acquisition of Land by Agreement by Local Authorities other than Parish Councils.*

157.—(1) A local authority may, for the purpose of any of their functions under this or any other public general Act, by agreement acquire, whether by way of purchase, lease, or exchange, any land, whether situate within or without the area of the local authority . . . \* \* \*

*Compulsory Acquisition of Land by Local Authorities other than Parish Councils.*

159.—(1) A county council may be authorized to purchase compulsorily any land, whether situate within or without the county, for the purpose of any of their functions under this or any other public general Act, including any such functions as are exercised through the standing joint committee.

(2) The council of a borough or urban or rural district may be authorized to purchase compulsorily any land, whether situate within or without

the area of the local authority, for any of the purposes of the Public Health Acts, 1875 to 1932. \* \* \*

*Acquisition and Disposal of Land by Parish Councils.*

167. A parish council may, for the purpose of any of their functions under this or any other public general Act, by agreement acquire, whether by way of purchase, lease, or exchange, any land whether situate within or without the parish. \* \* \*

Part VIII.—Expenses.

*County Councils.*

\* \* \*

181.—(1) All receipts of a county council, whether for general or special county purposes, shall be carried to the county fund, and all liabilities falling to be discharged by the council, whether for general or special county purposes, shall be discharged out of that fund . . .

182.—(1) Before the commencement of every financial year a county council shall cause to be submitted to them an estimate of the income and expenditure of the council during that financial year, whether on account of property, contributions, rates, loans, or otherwise.

(2) The council shall estimate the amounts which will be required to be raised in the first six months and in the second six months of the financial year by means of precepts.

(3) If before the expiration of the first six months of the financial year it appears to the council that the amounts estimated at the commencement of the year will be larger than is necessary or will be insufficient, the council may revise the estimate and alter the said amounts accordingly.

183.—(1) A county council shall have power to issue precepts for the levying of rates to meet all liabilities falling to be discharged by the council, for which provision is not otherwise made . . . \* \* \*

*Borough Councils.*

185.—(1) All receipts of the council of a borough, including the rents and profits of all corporate land, shall be carried to the general rate fund of the borough, and all liabilities falling to be discharged by the council shall be discharged out of that fund . . .

186. The council of a borough shall have power to levy rates to meet all liabilities falling to be discharged by the council for which provision is not otherwise made. \* \* \*



## Part IX.—Borrowing.

*Purposes for which and Mode in which Money may be Borrowed and Security for Borrowing.*

195. A local authority may, with the consent of the sanctioning authority, or in the case of a parish council with the consent of the Minister and of the county council, borrow such sums as may be required for any of the following purposes, that is to say:—

- (a) for acquiring any land which the local authority have power to acquire:
- (b) for erecting any building which the local authority have power to erect:
- (c) for the execution of any permanent work, the provision of any plant, or the doing of any other thing which the local authority have power to execute, provide, or do, if, in the opinion of the sanctioning authority or, in the case of a parish council, in the opinion of the Minister and of the county council, the cost of carrying out that purpose ought to be spread over a term of years:
- (d) in the case of a local authority being a county council, for the purpose of lending to a parish council any money which the parish council are authorized to borrow:
- (e) for any other purpose for which the local authority are authorized under any enactment, including any enactment in this Act, or under any statutory order, to borrow:

Provided that the consent of the sanctioning authority shall not be required to a borrowing by a county council for the purposes of paragraph (d) of this section.

196.—(1) Where a local authority are authorized to borrow money, they may, subject to the provisions of this Part of this Act, raise the money either—

- (a) by mortgage; or
- (b) with the consent of the Minister, by stock . . .
- (c) by debentures or annuity certificates . . .

Provided that a parish council shall not borrow otherwise than by way of mortgage.

(2) A debenture issued by a county council may be for any amount not less than five pounds.

197.—(1) All moneys borrowed by a local authority, whether before or after the commencement of this Act, shall be charged indifferently on all the revenues of the authority.

(2) Subject to the provisions of this section, all securities created



by a local authority, whether under this Act or under any other enactment or statutory order, shall rank equally without any priority . . . \* \* \*

212.—(1) Every sum borrowed by a local authority by way of mortgage shall be paid off either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund, or partly by one of these methods and partly by another or others of them . . . \* \* \*

#### Part X.—Accounts and Audit.

##### *Accounts subject to District Audit and Appointment and Expenses of District Auditors.*

\* \* \*

220.—(1) The Minister may, with the consent of the Treasury, appoint such number of district auditors as he thinks necessary for the performance of the duty of auditing the accounts which are for the time being by law subject to audit by district auditors, and may remove any auditor.

(2) The Minister may assign to district auditors their duties, and the districts in which they are respectively to act, and may change wholly or in part such duties or districts, and every district so assigned to a district auditor, whether originally or upon any change, shall be deemed to be an audit district, and the auditor to whom any district is assigned shall be deemed to be the district auditor for that district . . . \* \* \*

##### *Municipal Audit.*

237.—(1) In every borough there shall, unless and until any such alternative method of audit as hereinafter mentioned is in force at the commencement of this Act or is adopted by the council, be three borough auditors, two elected by the local government electors for the borough, called elective auditors, and one appointed by the mayor, called the mayor's auditor.

(2) An elective auditor shall be a person qualified to be a councillor of the borough, but he may not be a member or officer of the council.

(3) The mayor's auditor shall be appointed from among the members of the council.

(4) The term of office of each auditor shall be one year . . . \* \* \*

#### Part XI.—Local Financial Returns.

244.—(1) Subject to the provisions of this section, a return shall be made to the Minister for each year ending on the thirty-first day of

March, or on such other day as may be prescribed, of the income and expenditure of every local authority, and of the parish meeting for every rural parish not having a separate parish council . . . \* \* \*

## Part XII.—Byelaws.

### *Power of County Councils and Borough Councils to make Byelaws.*

249.—(1) A county council and the council of a borough may make byelaws for the good rule and government of the whole or any part of the county or borough, as the case may be, and for the prevention and suppression of nuisances therein:

Provided that byelaws made under this section by a county council shall not have effect in any borough.

(2) The confirming authority in relation to byelaws made under this section shall be the Secretary of State, except that as respects byelaws relating to public health or to any other matter which, in the opinion of the Secretary of State and of the Minister, concerns the functions of the Minister rather than those of the Secretary of State the confirming authority shall be the Minister . . .

(5) The council of an urban or rural district shall have power to enforce byelaws made by a county council under this section which are for the time being in force in the district or any part thereof. \* \* \*

## Part XV.—General Provisions.

### *Contracts.*

266.—(1) A local authority may enter into contracts necessary for the discharge of any of their functions.

(2) All contracts made by a local authority or by a committee thereof shall be made in accordance with the standing orders of the local authority, and in the case of contracts for the supply of goods or materials or for the execution of works, the standing orders shall—

- (a) require that, except as otherwise provided by or under the standing orders, notice of the intention of the authority or committee, as the case may be, to enter into the contract shall be published and tenders invited; and
- (b) regulate the manner in which such notice shall be published and tenders invited:

Provided that a person entering into a contract with a local authority shall not be bound to inquire whether the standing orders of the authority

which apply to the contract have been complied with, and all contracts entered into by a local authority, if otherwise valid, shall have full force and effect notwithstanding that the standing orders applicable thereto have not been complied with.

*Conferences, &c.*

267. A local authority, other than a parish council, may, in such cases and subject to such conditions as may be prescribed, pay any reasonable expenses incurred by members or officers of the authority or of any committee thereof, in attending a conference or meeting convened by one or more local authorities, or by any association of local authorities, for the purpose of discussing any matter connected with the discharge of the functions of the authority, and any reasonable expenses incurred in purchasing reports of the proceedings of any such conference or meeting:

Provided that nothing in this section shall affect the provisions of any other enactment for the time being in force authorising the payment of expenses incurred by members or officers of a local authority in attending any conference or meeting, or authorise a local authority to defray any expenses to which such enactment applies except in accordance with the provisions of that enactment.      \*      \*      \*

*Provisional Orders.*

285.—(1) Where the Minister is authorised to make a provisional order under this Act, or under any enactment passed after the commencement of this Act, the following provisions shall have effect:—

- (a) before a provisional order is made, notice of the purport of the application therefor shall be given by the applicants by advertisement in the London Gazette and in one or more local newspapers circulating in the area to which the provisional order will relate;
- (b) the Minister shall consider any objections to the application which may be made by any persons affected thereby, and shall, unless he considers that for special reasons an inquiry is unnecessary, cause a local inquiry to be held, of which notice shall be given in such manner as the Minister may direct and at which all persons interested shall be permitted to attend and make objections;
- (c) the Minister may submit the provisional order to Parliament for confirmation, and the order shall have no effect until it is confirmed by Parliament;
- (d) if while the Bill for the confirmation of the order is pending in either House of Parliament a petition is presented against the order, the petitioner shall be allowed to appear before the Select

Committee to which the Bill is referred, and oppose the order,  
as in the case of a private Bill . . . \* \* \*

*Inquiries.*

290.—(1) Where any department are authorised by this Act to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, confirmation, sanction or approval to any matter, or otherwise to act under this Act, and where the Secretary of State or the Minister is authorised to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, they or he may cause a local inquiry to be held.

(2) For the purpose of any such inquiry, the person appointed to hold the inquiry may by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined . . .

(4) Where a department cause any such inquiry to be held, the costs incurred by them in relation to that inquiry (including such reasonable sum not exceeding five guineas a day as they may determine for the services of any officer engaged in the inquiry) shall be paid by such local authority or party to the inquiry as the department may direct, and the department may certify the amount of the costs so incurred, and any amount so certified and directed by the department to be paid by any authority or person shall be recoverable from that authority or person either as a debt to the Crown or by the department summarily as a civil debt . . . \* \* \*

308.—(1) This Act may be cited as the Local Government Act, 1933,<sup>4</sup> and shall come into operation on the first day of June, nineteen hundred and thirty-four.

(2) This Act shall not extend to Scotland or Northern Ireland nor, except where otherwise expressly provided, to London.

<sup>4</sup> This gives authority to the Short Title. V. note 1, p. 88, *supra*.

# FRANCE

BY

WALTER RICE SHARP

### *The Author*

WALTER RICE SHARP, professor of political science at the University of Wisconsin, was born in Indiana on January 25, 1896. He received the A.B. degree at Wabash College, and later did graduate work at Yale University, the London School of Economics, and the University of Bordeaux, receiving the degree *Docteur en Droit* from the latter institution in 1922. After a year as assistant professor of history at Washington and Lee University, he joined the faculty of political science at the University of Wisconsin. His service at that institution was interrupted in 1929-32 when he served as Secretary for Fellowships and Grants in Aid for the Social Science Research Council of New York, and in 1934-35 when he was visiting lecturer in Government at Harvard University. He is the author of numerous articles which have appeared in political science periodicals, both American and French, as well as in the *Encyclopedia of the Social Sciences*. His books and monographs include: *Le Problème de la Seconde Chambre et la Démocratie Moderne* (Bordeaux, 1922); *The Economic Development of Modern Europe*, co-author with F. A. Ogg (rev. ed., New York, 1926); *The French Civil Service: Bureaucracy in Transition* (New York, 1931); "Public Personnel Management in France," Monograph 4 in *Civil Service Aboard*, a publication of the Commission of Inquiry on Public Service Personnel (New York, 1935); and *The Government of the French Republic* (New York, 1938).

## Chapter II

### FRANCE

#### PART I. LOCAL GOVERNMENT IN FRANCE

##### *Sec. 1. The Tradition of Centralization*

The evolution of French local government institutions contrasts sharply with the story of "local self-government" in Anglo-Saxon countries. Modern France is a unitary state with deeply rooted traditions of governmental centralization. These traditions have their historic origins in a thousand years of absolute monarchy and empire. Despite the democratic impact of the Great Revolution of 1789 upon the political development of the country, the substructure of centralized administration remained unbroken. Far from considering the advisability of "federalizing" the governmental system, the Revolutionary Assemblies endeavored to obliterate such remnants of regional autonomy as were left in the "hated" Ancien Régime. Since the primary impetus for the Revolution came from the populace of Paris and other large cities, the leaders of "the Third Estate" were determined to destroy the historical particularism of those provinces which they felt might be prejudicial to the success of the new France.

Under the Ancien Régime, the centralized power of the monarchy had in fact been somewhat moderated by the survival of provincial

[The author is under special obligation to his good friend, Dr. Robert Valeur, director of the French Information Center of New York, for generous assistance in securing various documentary materials from French cities. He would like also to express his thanks to the editor of the *National Municipal Review* for permission to reproduce, as sections 10 and 11 of this chapter, the substance of an article on "The Changing State-Local Financial Picture in France," which originally appeared in the September, 1936, issue of that periodical. It is in order to add that the field inquiries upon which this monograph is in part based were made during a summer's sojourn in France in 1935—a visit made possible by a grant in aid from the Social Science Research Council of New York, an organization to which the author has had more than one occasion to feel professionally grateful.]

"parliaments" in the outlying portions of the country. These provincial assemblies retained a considerable power to impose taxes and enact local ordinances. Over the entire national territory direct representatives of the central monarchy, called *intendants*, exercised fiscal, police, and judicial prerogatives "on the spot." By the time of Richelieu, local resistance to these royal "eyes and ears" had virtually disappeared except in the few border provinces where local parliaments continued to function. Throughout three-fourths of the country the *intendants* played the rôle of "viceroys." Under Louis XV, administrative centralization reached its greatest heights.

At the end of the Ancien Régime, France was, for purposes of civil administration, divided into 35 regional districts (*généralités*). Originally set up as units for tax collection, these districts did not wholly correspond to national geographic or ethnic divisions. The historic province of Normandy, for example, was divided into three *généralités*. Only a few years prior to the Revolution, Turgot and Necker, reformist-minded ministers of Louis XVI, projected a plan to reduce the sweep of central control over local affairs and to establish a regional assembly in each *généralité*. But the great upheaval of 1789 put the reins of administrative reform into more radical hands.

During the last phase of the absolute monarchy, French municipal government had fallen into a sorry state of affairs. The rise of commercial centers, dating from about the 10th century, had enabled certain of the larger provincial cities, such as Marseilles, Toulouse, and Lille, to throw off the yoke of subjection to the feudal baronage. This urban "emancipation" assumed various forms. In some cases, following a prolonged struggle, cities were granted comprehensive charters which entitled them "to elect their own local officers, to make their own bylaws, to be exempt from outside taxation, to have their own courts, and even to maintain a military establishment of their own."<sup>1</sup> In other instances the degree of freedom amounted to but little. In no case, however, was this municipal "self-government" to last for long. The citizens of the emancipated communities soon fell to fighting "over the spoils" and the situation became so disturbing that the

<sup>1</sup> W. B. Munro, *The Government of European Cities* (Revised ed., New York, 1927), p. 207. By permission of The Macmillan Company, publishers.



monarchy had to intervene "in the interest of law and order." The original charters were replaced by royal ordinances which firmly established central control over municipal affairs. Locally elected officials gave way to appointed functionaries. In order to secure money for its own national purposes, the monarchy sold these municipal offices, conferring upon the holders the right to pass them along by hereditary succession to their heirs. Such functionaries, however, enjoyed little independent power. Closely controlling them was another royal appointee (*sub-délégué*) who took his immediate orders from the regional *intendant*. By the 18th century it became the practice actually to sell municipal administrative posts to the highest bidder, with the result that the inhabitants paid heavily in taxes and got little or nothing in return. Under such a system municipal government was shot through with corruption, inefficiency, and disorder. In the majority of provincial cities poverty, disease, and illiteracy held unlimited sway.

Then came the Great Revolution. At one fell swoop the Constituent Assembly of 1790 swept away the old patchwork of regional and local administration. Proclaiming it as their purpose to make France "one and indivisible," the revolutionary leaders set up a symmetrical hierarchy of administrative areas. For the *généralités* there was substituted a network of 83 smaller territorial districts called *départements*. In size and population these new "county" areas were made as nearly uniform as practicable, with some regard, however, for historic boundary lines. In order to obliterate all reminders of the Ancien Régime, the *départements* were named after rivers (e.g., the Loire and the Seine), or mountains (e.g., the Jura and the Pyrenees), within their borders. Each *département* was subdivided into still smaller districts (later called *arrondissements*) for certain special purposes; while at the base of the pyramid 44,000 primary units, called *communes*, were established. Unlike the artificially constructed *départements*, the *communes* were based upon natural communities centering about local trade or the parish church. Designed to be all-inclusive territorial units of government, they embraced both urban and rural territory and varied widely in population from a few hundred persons to several hundred thousand.

In addition to an hierarchical symmetry of arrangement, this far-reaching reform introduced, though only temporarily as it turned out,

a considerable degree of local popular control. In each *département*, for example, a council of 36 members chosen by manhood suffrage was provided, while for the communes, rural and urban alike, there was to be a simple framework of local "self" government consisting of a popularly elected council and mayor.

Unfortunately, the French people could not assimilate so premature a dose of "home rule" under the stresses and strains of the revolutionary terror that soon engulfed the country. Administrative and financial chaos developed in many parts of the nation. Faced with foreign invasion, the national defense threatened to be undermined by so much decentralization in the conduct of local and provincial affairs. Under the Directory of 1795 a reaction toward stricter central control set in.

The advent of Napoleon as First Consul, and later as Emperor, brought this trend toward re-centralization to a climax. In 1800 Napoleon, abhorring disorder and obsessed by the desire for imperial unity, abolished the local autonomy of both *départements* and communes.<sup>2</sup> As direct representative of the central government, a *prefect* was henceforth to control the affairs of each *département*. Named after an imperial official of Roman times, the prefect was in reality a reformed "intendant." Furthermore, the departmental council became an appointive instead of an elective body and its powers were reduced to voting the budget and apportioning direct taxes among the sub-districts (*arrondissements*) within its jurisdiction. Similarly, it was decreed that the communes should hereafter be governed by a mayor (with one or more assistants), and a council of 10 to 30 members (depending upon population), all of whom were to be appointed either directly by the central government or indirectly through its local agent, the prefect. The canton was retained merely as a jurisdiction for the justice of the peace and as the local unit for administering military recruitment. The edifice of hierarchical control was completed by instituting the office of *subprefect* over the *arrondissement*,—an office reminding one of the *sub-délégué* of the Ancien Régime.

In outline this represents the beautifully constructed pyramid of

<sup>2</sup> By the law of 28 Pluiose of the Year VIII (Revolutionary Calendar).

administrative control created by Napoleon's organizing genius. At the apex stood the First Consul (soon to be Emperor) and his ministerial advisers. The authority of his government was relayed along the chain of prefects, subprefects, and mayors down to the base of the pyramid—the thousands of villages, towns, and cities throughout the land. As a design for highly centralized administration, this Napoleonic "code" may justly be regarded as a masterpiece. Except in minor particulars, it determines the administrative geography of France to this day. Its influence upon local government organization, moreover, has spread far beyond the confines of France—to the rest of Latin Europe, to Latin America, and even to far-away Japan.

*Sec. 2. The Evolution of Local Government under the Third Republic*

Despite the political vicissitudes of France from the fall of Napoleon (1815) to the advent of the Third Republic (1871), a fairly steady trend toward the establishment of limited local autonomy may be discerned. Indeed, liberal groups throughout the first half of the 19th century repeatedly proclaimed the need of administrative decentralization and greater local popular control. Although no progress was made in this sense during the Restoration (1815-30), the Orleanist Monarchy of Louis Philippe brought legislation (1833-38) which made both departmental and municipal councils once again elective and considerably enlarged their powers. The Government of the Second Republic (1848-1851) decided that the mayor and his assistants should be chosen by and from the membership of the popularly elected communal council, and that they should be held responsible to the council for directing the local public services. The first years of the Second Empire of Louis Napoleon produced a temporary reversion to increased central supervision. The powers of the prefect over departmental affairs were extended and the national government resumed the right to appoint the mayor and his administrative assistants from outside the municipal council, as well as to dissolve the latter body and replace it with an appointive commission under certain circumstances. But this reaction proved short-lived. By the later 1860's liberal tendencies again gained the ascendancy. Immediately following the Franco-Prussian War, the National Assembly of the new provisional republican government adopted the Law of 10 August 1871 which greatly aug-

mented the matters on which the departmental council might legislate and somewhat reduced the supervisory authority of the prefect. This notable reform also created a *commission départementale*, chosen from and by the elective departmental council and designed to exercise a certain amount of sustained control over the prefect. The new commission was empowered to meet once a month with the latter official and make specified decisions on policy as a "delegation" of the larger council. This act of 1871 still functions as the "organic law" on the organization and status of the *département*.<sup>3</sup>

Thirteen years later (1884), after the present Third Republic had become firmly consolidated on a parliamentary basis, the national legislature enacted a still more comprehensive reform dealing with the organization and powers of the commune. Preceded by years of detailed study by a special parliamentary commission, this municipal code is not only "a model of clearness and orderly arrangement," but may fairly be called "a charter of French municipal liberties." To this day it forms the legal basis for urban and rural government throughout all France except the capital city, which enjoys a special status.<sup>4</sup> Like the law of 1871 on the *départements*, the act of 1884 reflects the inveterate French fondness for uniformity and symmetry. As we shall see more fully later, it provides for the same general framework of government in great urban centers as in sparsely settled rural areas. Some allowance is made for population differences (1) in fixing the size of the municipal council, and (2) in determining the number of assistants (*adjoints*) that the council may choose from its membership to aid the mayor in his administrative duties. Otherwise, the set-up adheres to a uniform pattern.

From 1884 to 1926 the municipal code was amended only in minor particulars—generally in the direction of increased local privileges. Such, for example, was a law passed in 1890 permitting neighboring communes to effect consolidations for *ad hoc* purposes; an act of 1902 widening the borrowing powers of communes; and an act of 1908 somewhat restricting the right of the central government to suspend

<sup>3</sup> The complete text of this statute may be found in J. de Muro, *Le Conseil général* (Paris, 1937).

<sup>4</sup> Part II, A (pp. 202-217, *infra*), presents in English translation the more important provisions of the French Municipal Code, as revised to September, 1937.

and dismiss mayors and *adjoints*. For the *départements* the progress of decentralization was even less marked during these four decades. In 1926, however, Premier Poincaré, utilizing large financial powers delegated to him by Parliament during a severe monetary crisis, issued a legislative decree which not only liberally "deconcentrated" the control of Paris over departmental and communal affairs, but authorized municipalities to establish on their own initiative a wide range of public utility enterprises that hitherto had required specific statutory sanction.<sup>5</sup> Desirous of effecting economy in the overhead costs of local administration, Poincaré also ordered the abolition of over a hundred of the smaller *arrondissements*, with their courts of first instance.<sup>6</sup> For similar reasons, the 90 departmental "councils of prefecture" (local administrative courts) were replaced by 22 inter-departmental (i.e., regional) councils, sitting only in the larger provincial centers. In addition, the 1926 reforms authorized adjacent *départements* to set up joint services for economic and social welfare purposes. Four years later this power was extended to *non-adjacent départements* and broadened so as to permit corporate and financial autonomy for such joint services.

Since 1926 the relations between the central government and local authorities, while they remain fundamentally unchanged, have shifted generally in the direction of closer fiscal control and increasing subsidy from Paris. The exigencies of French public finance since the early 1930's have compelled the national government to assume an increasing share of local welfare and relief costs. This tendency in France but reflects a phenomenon that has swept across all industrialized countries in recent years.

### *Sec. 3. Present-day Units of Local Government*

For purposes of local government, the map of contemporary France embraces four tiers of units. Moving down the hierarchy, they are as follows:

<sup>5</sup> Decree of 5 November, 1926. See pp. 171-177, *infra*, for an account of how these powers have been utilized.

<sup>6</sup> The pressure of local "vested interests," however, caused Parliament later to reestablish most of these tribunals.

90 <i>départements</i>	(regional districts of general government)
279 <i>arrondissements</i>	(seats of courts of first instance)
3,027 <i>cantons</i>	(electoral and justice-of-the-peace districts)
38,104 <i>communes</i>	(general areas for rural, urban, and metropolitan government)

Somewhat comparable to the American county, the French *département* has a dual function: (a) it forms the general basic area for the "regional" administration and enforcement of national policy and (b) it is a territorial unit of local, i.e., "regional," government. Ranging in size from 185 to over 4,000 square miles, the *départements* average about 2,000 square miles, or twice as large as the average American county. In population these two sets of units are more sharply differentiated, the *département* averaging nearly 500,000 inhabitants, in contrast with less than 50,000 for the American county. Population figures range from less than 100,000 (in two sparsely settled mountainous regions in the French Alps) to 5,000,000 (in the *Département de la Seine*, embracing most of the metropolitan region of Greater Paris). Only six *départements* contain more than a million inhabitants. Each *département* has its *chef-lieu*, or "county seat," where the *Hôtel de la Prefecture*, or "court house," is located. This building serves as the prefect's imposing official residence, above which the tri-color always waves; houses the administrative bureaus of the prefecture; and is the meeting-place for the general council.

Sandwiched in between the *département* and the primary "communal" unit are two intermediate local government districts whose importance, never great, has steadily dwindled during the last half century. The larger of these intermediate districts is the *arrondissement*, of which there are two to nine per *département*. Although it enjoys the dubious luxury of a locally elected council, the latter body possesses no taxing or ordinance powers of its own. About all this body does nowadays is to apportion the quota of direct taxes (fixed by the *département*) among the communes within the *arrondissement*. This is a little more than a routine operation that might just as well be performed by the prefect's office. As we noted earlier, the central government is represented in each *arrondissement* by an appointive

agent—the *subprefect*. His office, however, is so devoid of any substantial power that it has not inaccurately been described as the prefect's "letter box." For many years the complete abolition of the *arrondissement* has been urged by reformers, and as pointed out above, some 106 *arrondissements* were temporarily decreed out of existence by Poincaré in 1926; but by four years later, local vested interests had forced their revival. Nowadays the *arrondissement* is important only as a local election district for members of the national Chamber of Deputies and as the territorial jurisdiction for the tribunal of first instance, the basic court of record in the national judicial system.

Even less important as a local government area is the *canton*. Today it is employed mainly as an administrative area for certain national purposes. Locally, it forms the electoral district for members of local government councils in the *arrondissement* and *département*, but little else. Nationally, it forms the area for the jurisdiction of the justice of the peace, the lowest magistrate in the national judicial hierarchy, and serves as a local military district for the examination of conscripts for army service. In it are quartered one or more brigades of the *gendarmerie*, a quasi-militarized state police force which may be requisitioned by local authorities in case of a serious threat to public safety and which patrols national highways outside incorporated municipalities. The *canton* is also used by the national Treasury as a local field area for the collection of certain taxes as well as in connection with the distribution of welfare grants to the aged, dependent mothers, and needy families.

For local government, taxation, and administration in the broad sense, the *commune* constitutes the primary geographical area. A network of 38,000 such units covers the entire territory of the nation. They vary from a few acres to 400 square miles, the average being about six square miles. In population they range from tiny rural districts of a few hundred people to great metropolitan centers like Lyons, Marseilles, and Paris, with a population of 500,000 to 3,000,000. Since 31,000 of the 38,000 *communes* contain less than 1,000 inhabitants each, it is apparent that the vast majority are small rural communities—a single village with adjoining opening country, or more typically, a cluster of hamlets with a few intervening square



miles of countryside. In rural France the people live in villages rather than in the open country. As a result of the law of equal inheritance, adopted during the Revolution, land-ownership has been so divided that today the average size of French farms is barely thirty acres.

Turning to the other end of the scale, we find only about 800 communes with a population in excess of 5,000. Only this group of communes, embracing the urban element in the French population, face the problems of what is essentially "city" government. Although for half a century the French population has steadily shifted city-ward, agriculture still accounts for 38 per cent of the employed adults, as against 31 per cent in industry and 11 per cent in commerce. Of a total population of 42,000,000, only 24 per cent live in towns of over 20,000 and 16 per cent in seventeen cities of more than 100,000 inhabitants each. Paris is still the only municipality with over a million people, while but two cities, Marseilles and Lyons, have populations in excess of 500,000. There are only three others (Bordeaux, Nice, and Lille) with over 200,000 inhabitants.

Urban population tends to be concentrated in the northeastern section of the country. Extending from Paris to the English Channel on the North and to Alsace-Lorraine on the Eastern frontier, this region forms the industrial heart of France. Since the World War the metallurgical and textile industries located therein have made tremendous strides. There, also, are largely concentrated the forces of labor and political radicalism—although the Socialists, and to a lesser degree the Communists, have also become a powerful political force in such southern seaport cities as Marseilles and Bordeaux. Including the suburban satellite communities, "Greater Paris" now accounts for nearly one seventh of the entire population of the country.

Governmentally, all communes (except Paris and in minor particulars a few other great cities), whether rural or urban, are subject to the same national statutory and administrative controls and all have the same general political framework—an elective council, with a mayor chosen by and from this council, along with a specified number of mayor's administrative assistants (*adjoints*), the number depending upon the population class to which the commune belongs. It is rather in the scope and variety of their municipal services, the size



of their expenditure budgets, and the number of their administrative employees that the communes are governmentally differentiated.

Changes in the legal status of all French local government areas may be made only by national authority. According to national law, the juridical status of *arrondissements* and *cantons* markedly differs from that of *départements* and communes. The former have no "corporate personality" and may neither sue nor be sued in the courts. They possess no taxing power and therefore have no budgets of their own. The latter, on the other hand, are public corporations and as such may acquire or dispose of property, institute actions in the law courts, and be held liable for breach of contract, proven negligence, or illegal acts committed by their agents.

Until 1938, to create, abolish, or alter territorially any local government unit, or change the seat of government within it, required parliamentary authorization. So far as the *départements* are concerned, the only changes since the Napoleonic period have been due to loss or gain of territory through war—the annexation of Savoy and Nice from Italy in the 1860's, the loss of Alsace-Lorraine to Germany after the Franco-Prussian War, and its recovery in the Peace Settlement of 1919. While the boundaries of the vast majority of the communes are the same as before the Revolution, some subdivision and consolidation have taken place during the last half century as a result of population shifts.

One reason why there has not been more territorial rearrangement is the fact that such changes, under the municipal code as originally formulated, entailed a rather complicated local procedure prior to parliamentary authorization. If there was a local demand for the division of one commune into two or more new communes, or for the consolidation of two or more into a single unit, either of the municipal councils concerned, or a specified number of voters, might request an inquiry by the prefect. The results of this inquiry were then laid before the departmental council for consideration. If this body gave its approval (in case the creation of a new commune was involved), the petition had next to be submitted to the national Council of State (the supreme administrative court of the land) for an opinion. If the latter was favorable, Parliament would establish the new unit by a special statutory enactment. For territorial modifications of

existing communes, a decree issued directly by the Council of State was sufficient unless the boundaries of any canton were to be altered, in which case Parliament's consent was necessary. In the future, according to the provisions of legislation adopted in June 1938, *all* changes in the territorial extent of local government areas may be made by national administrative decree, no law being necessary.<sup>7</sup>

The other reason why comparatively few changes occur is socio-logical—local pride, tradition, inertia, and vested interests. Today there are nearly 400 communes which have been virtually depopulated, with less than fifty persons each left in them. There are thousands of rural communes too poor in resources to maintain the uniformly prescribed organization of council, mayor, tax collector, communal secretary, village constable, and separate school. In an age of improved roads, motor cars, and telephones, a few thousand "consolidated" communes could probably perform the tasks of local government much more efficiently and economically than the present excessive number, without serious inconvenience to the taxpayer. But the close tie-up of local officials with national party politics, particularly the presence of a powerful bloc of mayors and local councillors in Parliament itself, has so far prevented any such "surgical" operation on the governmental map of France. Functional consolidation of certain types of services, now permissible both at the departmental and communal level, is making some headway, but on the whole even this flank attack upon the "plague" of excessive administrative units has yielded disappointing results.

To change the name of a commune is even more difficult than to alter its boundaries. In a country with a thousand years of history behind it, local place names take on a sanctity that is almost inviolable. No change in name may be made without local initiative—a formal request from the municipal council. Not only must the general council of the *département* also be consulted, but the Council of State must give its approval of the request before the change may be authorized by national decree. In order to avoid troublesome duplications or similarities in local place names, the postal authorities are likewise ordinarily consulted prior to the issuance of such a decree.

<sup>7</sup> See the Decree-Law of 14 June 1938 issued by the Daladier Government.

#### Sec. 4. Local Elections

*In the départements.* Although local popular control over departmental affairs is less extensive than local control over communal policy, the powers of the *conseil général du département* have since 1871, and still more since 1926, acquired considerable importance. We shall therefore initiate our examination of the processes of local control by explaining how this deliberative body is chosen.

The membership of the general council is elected for a term of six years, one-half retiring every three years. Since each canton within the *département* may choose one councillor, the size of the council varies with number of cantons. This arrangement results in a council of from 17 to 67 members, varying roughly according to the population of the *département*. Any male citizen who is at least 25 years old, is on the voters' list, and has his legal residence or pays direct taxes in the *département*, may stand for election to the council, provided he does not hold administrative or judicial office at the time. The triennial elections take place on the same day (in October) in all *départements*, as fixed by national decree of the Ministry of the Interior. The electoral period opens officially on the day this decree is published, which must be at least two weeks prior to the polling and is by custom no longer than this period.

The law itself makes no provision for the nomination of candidates by any set procedure. No filing of a petition or presentation of nomination papers is required. Nevertheless, local party groups informally designate men to stand for election as their candidates. In most cases this is done by a conference of party leaders, although a general meeting or caucus of party members in good standing may be called to make the nomination. It is also customary for a good many men to run as "self-nominees," or independents,—some for the local publicity they fancy will help them in their professions or businesses, others merely for the sport of it.

While departmental elections could at no time be characterized as entirely *non-partisan*, they did not until recent years assume the complexion of out-and-out party contests. Lasting a fortnight or so, the campaign tends to be a rather quiet and dignified affair, especially

in the rural cantons. The great majority of nominees come from the ranks of public-spirited citizens with considerable local prestige and individual ability. Since the job of councillor carries with it no salary, the financial motive is lacking.<sup>8</sup> A good many candidates, however, regard service in the departmental "legislature" as a stepping stone to election to the national Parliament. In France most deputies and senators are in fact recruited from the membership of local councils, communal as well as departmental. Many of the latter include such a large proportion of national legislators among their members that they are able to hold their sessions only when Parliament is in recess.

The techniques of local campaigning, while they have much in common with local political campaigning American style, include certain devices peculiar to the French. In rural constituencies campaign activity is highly informal. Candidates make the rounds of the village cafés, set up the drinks (usually of local wine), and engage in free-and-easy conversation with small groups of their "fellow-citizens." There will be questions from the auditors and oftentimes a vigorous interchange of opinions ensues. One or two organized public meetings usually mark the close of the campaign. In the more populous urban communities large public meetings, chiefly indoors, are more extensively resorted to. On these occasions heckling frequently interrupts the full-dress oratory at which French politicians are peculiarly adept. If the contest involves bitterly controversial issues, a public platform debate between opposing candidates may climax the campaign.

During the "legal" campaign period, candidates are entitled, under national law, to display election posters on bulletin boards provided by each municipality, but in no other public place. These posters (*affiches*) must be printed on colored paper so as to avoid confusion with official administrative bulletins. The argumentative poster is a favorite type of appeal for people as literate and politically minded as the French. In the larger cities the pictorial placard and cartoon have recently come into wide use. Up to midnight before the polling day, each candidate may, at a reduced rate, send by mail to all the voters

<sup>8</sup> Members of the general council are, however, entitled to a mileage and per diem allowance for attending its meetings, the latter being limited by national law to 60 to 100 francs (about \$2.00 to \$3.00) a day, depending upon the population of the city where the council meets.

in his constituency a single campaign circular, along with a sample ballot containing his name.

The administration of all local elections is governed by the same rules as for national elections. In order to vote, qualified electors must be registered on a permanent voters' list which is kept at the city hall (*mairie*) and revised annually. The polls are manned by an election board made up of local officials. In accordance with long-established custom in Continental countries, the polling always takes place on Sunday. In rural areas the country folk stream into the towns in holiday spirit, eating their simple package lunch at the local cafés and invariably washing it down with a bottle of *vin ordinaire*. Although they have not yet secured the suffrage, the women accompany their husbands and join in the animated political discussions that mark the "gala" occasion.

Upon entering the polling place, usually at the town hall, the voter presents his "electoral card," which will previously have been mailed to him. When properly identified with his name on the registration list, he is handed an envelope made of white opaque paper. He then retires to the secrecy of the voting booth and places in the envelope the ballot containing the name of the candidate for whom he desires to vote. Each ballot consists of a rectangular piece of paper, about four by five inches in size. In the center appears the candidate's name in fairly large print, while directly beneath it his party designation and his occupation or both may be given in smaller letters. All ballots are printed by the candidates or their party organizations at their own expense, though the format must follow certain specifications laid down by the election law. Since the voter does not mark any "consolidated" ballot, as is necessary with the Australian type employed in the United States, there is no way for him to "write in" the name of a candidate not previously nominated except by bringing along a blank piece of paper. The sealed envelope containing the voter's ballot is dropped into a ballot box just outside the polling booth.

If no candidate receives a clear majority of the votes cast, amounting to at least twenty-five per cent of the total number of registered voters, a run-off election must be held a week later. This is usually necessary in a fourth to a third of the constituencies. At this second election (*ballottage*), a mere plurality vote suffices for election. Al-

though new candidates may enter the lists during the intervening period, it is used chiefly by rival party coalitions to effect a concentration of strength for the final vote. Under the French multi-party system these local coalitions tend to reflect the same Right-and-Left cleavage that marks the national political situation at the time. In those constituencies (the vast majority) where opposing coalition blocs are at all closely divided in strength, the conservative Right will ordinarily withdraw all but its strongest candidate. This usually means the man who obtained the largest vote on the initial poll. The Left coalition follows a similar procedure. On the second ballot, therefore, the contest is narrowed down to a straight bi-party affair.

When the polls close, the presiding officer of the election board opens the ballot box. The total number of ballots is then checked against the clipped corners of the electoral cards, as well as the registration list. If the ballots cast exceed 300 in number, the officer selects from those voters present in the room whatever number of tellers (*scrutateurs*) he thinks necessary in order to facilitate the counting of the votes. The count proceeds oftentimes in the presence of a crowd that may cheer or vociferously disapprove its progress. When it is completed, the election board prepares an official report which is sent to the *chef-lieu* of the canton. There the votes of all the communes are tabulated and the final result announced. Since all properly marked ballots are destroyed immediately upon completion of the count, no recount is possible in the event of a contested election. Nevertheless, the validity of an election may be reviewed by the regional administrative court (*conseil de préfecture interdépartemental*), with an appeal, under certain conditions, to the national Council of State. An election may be voided because of bribery, intimidation, ballot-box stuffing, personation, or serious disorder at the polls. Only rarely, however, will the court void an election unless there have been grave irregularities. The election statute places no limit upon campaign expenditures, nor does it compel the publication of their sources. The only concern of the law is to prevent the dishonest use of funds. In comparison with American campaigns, the amount of money spent in French local elections is small.

Since the entire nation chooses members of local councils on the same day, the aggregate result of the voting may indicate a political

trend of national significance. In recent years, particularly since the victory of the Popular Front "anti-fascist" coalition in the 1936 parliamentary elections, national party leaders have endeavored to introduce national issues into local elections. Thus, in the cantonal elections of October 1937, Premier Chautemps and many of his ministers addressed meetings throughout the country, defending and explaining their accomplishments. When the count of the vote showed a moderately leftward trend, it was hailed by Popular Front spokesmen as a "triumph for democracy" and the existing Government's policies. The shift in party strength in the 90 departmental councils, before and after these elections, was as follows: <sup>9</sup>

	<i>Parties</i>	<i>Before the Election</i>	<i>After the Election</i>	<i>Differences</i>
Popular Front	Communists	10	41	+ 31
	Socialists	163	234	+ 71
	Socialist Union			
	and other dissident groups	78	63	- 15
	Radical- Socialists	568	526	- 42
				+ 45
Conservative Right	Center and Moderate Right	403	346	- 57
	Right Parties	296	299	+ 3
	La Rocque Party	4	14	+ 10
	Doriot Party			
	Alsatian Autonomists			
		1	2	+ 1
		2	0	- 2
				- 45
Totals		1525	1525	

As a general rule, except in strongly urbanized *départements*, the political pendulum tends to hover about a "moderate" or "center" posi-

<sup>9</sup> As reported in the *Manchester Guardian Weekly*, 22 Oct., 1937. These figures do not include the hold-over councillors, 1502 in number. In this election a run-off vote was necessary in 467 constituencies.



tion. For provincial France this tendency produces a situation in which such a pivotal party as the Radical-Socialist, made up largely of shopkeepers, artisans and small farmers, usually wins by far the largest bloc of members in the departmental council, with a proportionately smaller representation of advanced leftist groups than in the national Chamber of Deputies.

The connection between departmental and national party politics at election time does not mean that votes on local issues in the council follow national partisan lines. This is seldom the case except when the vote takes the form of a resolution on some such bitterly controversial matter as the relation of the church to the public schools, or the use of taxation for social purposes. The line-up in the council tends rather to conform to specific local cleavages—economic, geographical, and cultural.

*In the municipalities.* The pattern of electoral politics in the communes differs only in minor particulars from the outline given above for the *départements*. The municipal code provides for a complete renewal of the communal council every six years. If the population of the commune is less than 10,000, the entire membership is elected at large. In larger communes, a division into districts, or wards, may be made. If this is done, each district elects its proportionate quota of councillors, which may not be fewer than four. The task of districting the commune falls upon the general council of the *département*. While it is not compelled to divide any commune for electoral purposes, it invariably does so for all sizable urban centers. Any one of its members, the prefect, or the council or voters of the commune concerned, may take the initiative in requesting a division. The procedure is handled in a thoroughly non-partisan manner, with no possibility of "gerrymandering". Even where a communal council is chosen at large, the prefect may, in his discretion, divide the commune into two or more voting precincts. The same list of candidates, however, is voted upon in all precincts.

Municipal elections always take place at a set date in the spring in order to avoid any overlapping or confusion with the autumn departmental elections. French law further separates local from national elections by a calendric sequence which causes them to fall in different years. Thus the most recent municipal campaign occurred



in May 1935, the parliamentary elections in May 1936, and the cantonal elections (for the *conseils de département et d'arrondissement*) in October 1937. For all 38,000 communes, the initial polling must be held on the first Sunday in May, with the run-off vote a week later. The date of the election is announced locally by prefectural decree at least two weeks prior to the first polling. Municipal candidates are nominated in the same free and informal manner as candidates for the other local councils. In the larger cities, however, the rôle of the party organization assumes a somewhat greater importance than in departmental politics. Local party headquarters are established for the purpose of preparing appeals to the electorate, arranging schedules of campaign meetings, and seeing to it that party supporters are properly registered.

Among the more important candidates for election to city councils, a large number of national legislators is invariably found. For example, in the municipal elections of May 1935, eight ministers (including Herriot, Laval, and Flandin), 172 senators, and 313 deputies ran for municipal office. Yet French city politics presents nothing quite comparable to the municipal party machinery of the great American metropolis—nothing like Tammany Hall, the Philadelphia Vare machine, or the Pendergast organization in Kansas City. Of all the French party groups, only the Socialists and Communists have developed an elaborate organizational hierarchy of official committees, membership lists, and congresses, with a permanent secretariat. The basis of machine politics hardly exists in French cities. There is practically no patronage to be distributed, while the letting of municipal contracts is strictly regulated by national law, as is also the granting of franchises to public utility enterprises. Accordingly, the campaign activities of local party groups are performed primarily by volunteer workers. Party funds come chiefly from membership dues and small voluntary contributions.

Broadly speaking, municipal campaigns in the smaller cities tend to turn more around personalities than well-defined issues. In such great cities as Paris, Marseilles, Lyons, or Bordeaux, however, the contest is often fought over rival programs relating to proposed municipal improvements or the expansion of the city's educational, social welfare, or utility services. When this happens, campaign excitement

runs high and as the day for the vote approaches the whole community becomes as engrossed in the struggle as in any American metropolis. Political clubs appear in great profusion. Considerably more partisan in France than in America, the local press resorts to frenzied exhortations and recriminations. The official billboards are splashed with colorful election posters and cartoons.

Election by the list system places a premium on straight party voting. Nowadays all organized party groups have ballots printed on which the names of their slate of candidates appear. The number of nominees always equals the number of seats to be filled. Where the entire council is chosen at large, the list may vary from ten to twenty-three, depending upon the population class of the commune (up to 10,000). Where the commune is divided into wards, the list contains a smaller number—usually four to six. The only way the voter can split a ticket is to mark out certain names on a given party ballot and insert others. Since comparatively few voters do this, the entire slate of a single party, or coalition of parties, frequently secures the required majority vote on the initial poll. In this event, minority groups have no representation on the council. Such a situation, however, seldom develops, for in the larger cities at least, no party is likely to secure an absolute majority for its entire ticket in every election district. Only candidates securing such a majority are elected on the initial poll. The remaining seats must be voted for in the run-off election a week later. This gives opportunity for the formation of new electoral alliances, the participating parties arranging a joint slate on which the number of candidates of each party is proportional to the popular vote obtained in the initial poll. Most run-off elections, therefore, lose their multi-angular character and become bi-lateral contests between right and left "blocs."

The extent to which *ballottage* is necessary varies directly with two factors: (a) the population of the commune, and (b) the distribution of the popular strength of party groups. As a rule, about half of the communes of more than 5,000 inhabitants have to hold two polls. For the municipal elections of 1929 and 1935 the results were as follows:<sup>10</sup>

<sup>10</sup> G. Le Gou, "Les Elections Municipales des 5 et 12 Mai, 1935," *Politica* (Paris). June 1935.

<i>Number of Communes over 5,000 in Population</i>			
<i>Election Year</i>	<i>(excluding Paris) and the Seine)</i>	<i>Majority on First Vote</i>	<i>Run-off Elections</i>
1929	765	440	325
1935	858	408	450

Among the communes where a run-off vote was necessary a heavy concentration of urban centers was to be found. On the other hand, few of the rural communes (below 5,000 in population) fail to choose their complete membership at the initial poll. More often than not, local elections in tiny village communities are a mere formality. A slate is agreed upon in advance without opposition.

#### *Sec. 5. The Governmental Process at the "County" Level*

*The prefect.* The powers of government in the *département* are shared by the prefect and the elective general council. The former official serves a dual function: he is at one and the same time the general field agent of the national authority in the *département* and the executive head of the "county" government structure. The prefect is chosen by and responsible to the Minister of the Interior. Being essentially a political appointee, he was not until recently required to have any special administrative qualifications. Since 1934, however, as a result of the constantly expanding administrative business with which prefects must deal, national law has prescribed that they be appointed by promotion from the ranks of subprefects or general secretaries of prefecture with a minimum period of years in the public service. By crystallizing custom, this law has made the office a "career" post. Having behind it a long and honorable history, the post of prefect occupies a rank in the administrative hierarchy equal to that of a division head in a national ministry and carries high prestige and esteem. The prefect's regular salary, which varies with the importance of the *département*, is paid out of the budget of the Ministry of the Interior. In addition, he receives a substantial allowance for travel and official entertainment. His official automobile and the upkeep of the prefecture, however, are provided out of local appropriations, thus

constituting a symbol of the close relationship that necessarily exists between the prefect and the representatives of the local community.

There is no fixed term for the prefect. As political expediency demands, he may be shifted from one prefecture to another. In rare instances, transfer to a less important *département* may amount to a "demotion" in rank. Sometimes a prefect is placed on an "unattached list." But outright dismissal is nowadays practically unknown. At the age of sixty and after thirty years of service, any prefect may be retired on a pension under the joint-contributory retirement system covering all national civil servants.

*The staff of the prefecture.* To aid him in the exercise of his functions, the prefect is flanked by a general secretary of prefecture, a private secretary (*chef de cabinet*), and an office staff. Appointed by the central government, the general secretary acts as "clerk" for the general council and as such certifies the record of its deliberations. He also has charge of the official archives of the *département*, and in those prefectural seats where there is a regional administrative court, he performs the further function of representing local governmental jurisdictions in cases before the tribunal.

Because of the confidential nature of the position of *chef de cabinet*, the prefect has complete discretion in filling this post, although here again it is customary to "detach" temporarily a subprefect or general secretary (in a less important *département*) from his regular functions. Upon completing a tour of duty as private secretary to a prefect, the detached official may resume his former civil service status.

The staff of the prefecture is divided into such number of administrative bureaus as is prescribed by order of the prefect, but only after general authorization by the general council and the approval of the Minister of the Interior. In 1920 Parliament enacted a statute laying down general rules for recruiting, compensating, promoting, and disciplining prefectural employees. As a result of this law, every *département* throughout the country now operates under a personnel system based upon competitive examination and security of tenure. The number of employees and their administrative organization, which naturally varies with the size of the *département*, are determined by the general council upon recommendation by the prefect. The salaries of the prefectural staff are provided jointly by departmental appropria-

tions and the budget of the Ministry of the Interior, the department's share varying from one- to two-thirds of the total payroll in accordance with an index which relates taxable property to population. The personnel of such other services and institutions as are created by the council under permissive legislation must be remunerated entirely out of departmental funds. The general council may establish a retirement system for the department's employees. In nearly all jurisdictions this has been done on a joint contributory basis, in which case the central Treasury adds five per cent of that portion of the payroll for which it is responsible.

Since, as we shall see later, the public services operated directly by the *département* are relatively restricted, the size of its administrative personnel, in comparison with the municipalities, is small. While detailed figures are not available, the grand total for all 90 *départements* probably does not exceed 50,000, or about 500 on an average.

*The prefect's powers as a national official.* As representative of the national authority, the prefect possesses far-reaching administrative powers. Some of these powers he exercises merely as transmitting agent for his chief, the Minister of the Interior. For example, he must pass along instructions from Paris to the authorities within his jurisdiction. Other powers permit him to make decisions on his own initiative, although even in the latter case all his official acts are subject to annulment by the minister on grounds either of illegality or inexpediency. The steady movement toward a "deconcentration" of governmental power during the last half century has considerably increased the range of matters on which the prefect may exercise personal discretion. These functions may be classified under five broad heads:

(a) The appointment of subordinate personnel of various state services operating within the *département*, including, notably, penitentiaries, postal and telegraph stations, the road and bridge administration, certain welfare establishments, and teachers in public elementary schools. For the most part, however, this appointing power is exercised within the framework of a competitive merit system established by the central government.

(b) General supervision over the local administration of such State activities as public relief, public works, national highways, elementary education, and military recruitment.

(c) Representation of the central state in its corporate capacity, e.g., in the signing of local contracts for the purchase and sale of supplies and the construction of public works, and in suits brought by or against state agencies in the courts.

(d) Administrative "tutelage" over the acts of local governing bodies and officials within the *département*. Under this power the prefect may dissolve any illegal meeting of the departmental council; suspend a mayor or a municipal council for one month or revoke the election of a mayor or an *adjoint*; or insert in the budget of any commune any mandatory expenditures which the municipal council fails to vote.

(e) A general police power which includes responsibility for assuring public order and safety, sanitation, and control of epidemics; for the application of national law relative to the press, public meetings, theaters, and private organizations; and for surveillance of dangerous aliens. In case of grave emergency, the prefect may requisition aid from the armed forces of the state quartered within his *département*. All these police functions, however, are really in the nature of powers held in reserve. They seldom come into play except when the communal authority, i.e., the mayor, is remiss in his duty or finds himself unable to cope with some grave disorder or physical calamity. As a matter of fact, a large portion of the prefect's power of control over the smaller municipalities was transferred in 1926 to the subprefect, although even he must act under the prefect's general surveillance. In 1935 there was added to the prefect's police duties the responsibility of assisting the agents of the administration of justice in investigating and apprehending persons charged with crimes and serious misdemeanors.

Despite the apparently far-reaching extent of the prefect's authority as representative of the central government, it is important to emphasize that he possesses no blanket ordinance power. Prefectoral ordinances may cover only those matters expressly enumerated by national statute. Moreover, any ordinance issued in the prefect's name may be annulled or modified by the appropriate national minister if the latter decides that the ordinance violates the text or spirit of a national law or decree. Any interested party (private citizen or public employee) has the right to appeal to the minister for this purpose. If

the minister's decision is negative, the interested party has recourse to the Council of State. By a convenient and inexpensive procedure this high tribunal hears the complaint and may annul or amend the attacked prefectoral ordinance on grounds of outright illegality (*excès de pouvoir*) or abuse of authority (*détournement de pouvoir*). The administrative jurisprudence of the Council of State has evolved admirable safeguards against arbitrary behavior by the prefect.<sup>11</sup>

As a national administrative official, the practical importance of the prefect has been steadily declining for a generation. Since the central government now operates so many public services of a technical nature, it is natural that direct communication between the headquarters bureaus in Paris and their field agents in the *département* (highway engineers, school supervisors, tax officials, and welfare administrators) should more and more replace the *indirect* hierarchical process laid down in the statutes. The telephone and air mail permit a "short-circuiting" in administration that tends to ignore the prefecture. Except for the supervision of national elections and the state police, the Ministry of the Interior is now regarded, by most observers, as an anachronism. Not infrequently, moreover, prefects are tempted to "play politics" in order to advance their own professional interests. Those who yield to this temptation are likely to give greater heed to "orders" from deputies representing their *départements* than to those from the Ministry of the Interior.

The prefect's ceremonial rôle, however, remains undiminished. His is the honor of arranging for the official reception of the President of the Republic or *Monsieur le Ministre* when either visits the *département*. At the round of ceremonies and banquets to which such visits invariably give rise, it is the prefect who always presides and gives the address of welcome with the proper French flourish.

*The prefect as head of the departmental government.* In his capacity as a departmental executive, the prefect's functions are three-fold. First of all, he is charged with preparing business for the consideration of the general council. This business includes the budget, draft ordinances, and an annual report on the operation and needs of the *département* and its administrative services. Including the revenue

<sup>11</sup> For details relative to the procedure and powers of the Council of State, see W. R. Sharp, *The Government of the French Republic* (New York, 1938), Ch. X.



and expenditure estimates, an annual budget report must be printed at least ten days in advance of the session at which it is to be considered, and distributed to the *commission départementale*. If need be, however, the prefect may present additional proposals on urgent matters at the opening of, or at any time during, the council session. Although the prefect himself does not preside over the council, he may be present except when the council is examining his accounts. He has no vote, but may address the assembly at any time, particularly for the purpose of presenting and explaining his budgetary and other recommendations when they are reached on the agenda. If the council appears about to take some illegal action, the prefect should call this to its attention.

The second function of the prefect is purely executive in character. All decisions of the council requiring executive action are put into effect by his order. In this connection he determines the date when the decision is to become effective, makes any new appointments that may be necessary, and arranges for the letting of contracts and ordering of supplies and equipment. As executor of the departmental budget, the prefect makes money allotments to the various bureaus and services, conducts a pre-audit of expenditures (as to their legality and expediency), and renders an annual accounting to the council of how all moneys have been spent. The actual disbursement of funds, however, is handled by a field officer of the national Treasury—the *trésorier-payeur général*.

In the exercise of both the foregoing functions, the prefect naturally relies upon his administrative staff for the routine work involved therein. The bureaus of the prefecture, that is to say, constitute his "department of general administration." On a small scale, they perform the tasks of a combined budget, personnel, accounting, and legislative drafting agency.

The post-audit of administrative accounts, on the other hand, is performed by a special judicial agency established by the national government. This fiscal court (*Cour des Comptes*), with headquarters in Paris, is composed of professionally trained judges and an auxiliary staff appointed for life. When the annual accounts of the *trésorier-payeur général* are closed, one set goes to the departmental council and the other to Paris. A division of the court audits every payment



and voucher and then prepares a report covering all transactions. The report forms the basis for the final settlement of the accounts by the general council, as well as, in case of expenditures contrary to law, for civil or criminal action against the responsible officials. Unfortunately, the Court of Accounts operates so slowly in its gigantic task of auditing the accounts of local and national agencies that years sometimes pass before the final report reaches the departmental authorities. Such delay mars the effectiveness of what is otherwise an admirable arrangement for independent audit.

The third function of the prefect may be briefly indicated. In addition to representing the state in judicial actions, he acts as legal agent for the *département* whenever it engages in litigation, that is, sues or is sued in the courts. Although the rule is that no action may be instituted except by authorization of the general council, the prefect may, if the matter is urgent, do so on his own initiative. When the state and *département* are contesting parties before the courts, a situation that occasionally develops, the former is represented by the prefect and the latter by a member of the departmental commission as delegate of the council.

*The work of the general council.* The elective assembly of the *département* must hold two regular sessions each year. The first session opens between April 15th and May 15th, on the day set by the council at its preceding session or by its permanent committee (*commission départementale*). The duration of the spring session is limited by law to two weeks. The second session, at which the annual budget is voted, occurs in the autumn. It opens sometime between August 15th and October 1st and may last as long as a month. Special sessions occur but rarely. Any action taken outside a legal session is null and void and may be so proclaimed by the prefect.

It is at the regular autumn meeting that the council sets up its internal organization. The member with longest service acts as temporary presiding officer. By secret ballot a *bureau* is at once elected consisting of a president, one or more vice-presidents, and several secretaries. The members of this directing bureau hold office during the ensuing year. The council fixes its own rules of procedure, which, once adopted for the year, may not be disregarded thereafter. The quorum for the conduct of business consists of a majority of the total

membership. In general, the members vote by rising from their seats. Upon request of a sixth of their number, however, a roll call must be taken. In case of a tie, the president casts the deciding vote.

In principle all sessions of the general council are public. A special section of seats must be reserved for visitors. Nevertheless, upon the proposal of the president, the prefect, or any five members, the council may, by a majority vote, go into executive session, during which all outsiders (journalists as well as spectators) are barred. Minutes of each meeting must be kept by the secretariat of the council. These minutes, containing the names of members present, the text of all reports and motions, a summary of the discussion, and the results of all public votes, are read and approved at the opening of the next meeting. The original *procès verbaux* and supporting documents are deposited in the archives of the prefecture. A certified copy is then sent by the general secretary to the Ministry of the Interior, which alone may order publication of the council's deliberations at the close of each session.

In contrast with the status of the municipal council, the powers of the departmental assembly are limited to those matters specifically enumerated in national statutes—chiefly the organic law of 10 August 1871. Functionally, these powers fall under three main heads: (a) the control of departmental personnel, buildings, and other property; (b) highways and public works; and (c) social welfare. Under the first head, as already noted, the council may determine the conditions by which all employees paid *exclusively* out of departmental funds are recruited, specify what their functions shall be, and fix their scale of compensation. It may authorize the acquisition and sale of property, receive gifts or legacies, and lay down the conditions governing the lease of land or buildings by the *département*.

As regards highways, the council has the power to plan, classify and maintain a departmental road system. This includes secondary and tertiary highways only, the national Ministry of Public Works controlling national (arterial) routes. For the upkeep of local roads, the council may either engage the services of the highway engineering corps of this ministry located in the *département*, or employ a highway staff of its own. An increasing majority of smaller *départements* now follow the former arrangement because of its obvious technical

and fiscal advantages. Construction projects are usually let to private contractors. The law permits departmental councils to establish certain public utility enterprises, chiefly waterworks, tramways, railway and autobus lines, either by direct operation or by franchise or concession to private concerns. When this is done, however, final approval must be obtained from Parliament, in the case of railway enterprises, or from the Council of State, for other forms of transport. When, as has increasingly happened during recent depression years, the state grants subsidies for local public works, it also falls to the general council to appropriate the share of the cost that must be met by the *département*.

The third power confers the right to create and operate welfare and relief services. These include such things as assistance to homeless children, the aged, large needy families, and expectant mothers, as well as free medical aid, sanitary services, insane asylums, and public hospitals. Recent legislation has authorized *départements* to set up free employment offices for the placement of workers. Although labor placement is administered primarily at the municipal level, one or more such offices must be maintained by every *département* regardless of whether there are any municipal offices.

On certain matters the departmental council exercises powers of control over the communal authorities. As noted earlier, it passes upon requests for the abolition or consolidation of communes and the transfer of a communal government headquarters from one town to another within the same commune. If several communes have difficulty in arriving at a satisfactory division of the costs of joint projects, the departmental council settles the controversy. It also prescribes the maximum rate of "emergency" taxes (*centimes extraordinaires*) which may be imposed by any commune within the *département*.

Finally, the council is required to render an opinion to the central government upon questions that may be referred to it under the Act of 1871 and other national laws and decrees. These questions range over much of the field of local government organization upon which the state legislates. Upon any subject not political in character, the departmental assembly also has the right to vote resolutions or give optional opinions. Their number is usually large, particularly at the spring session when there is not much other business to be trans-

acted. All such resolutions are transmitted to the appropriate minister by the president of the council. If resolutions on the same subject reach a minister from a great many councils, the national authorities know that a condition exists which deserves its attention.

Before 1926, few of the major decisions of the general council were self-executive; that is to say, they had to be approved either by the prefect or the central authorities before they could be put into effect. Since the Poincaré reforms of that year, no such approval, whether express or tacit, has been necessary for most decisions. In this regard the prefect's power is now limited to asking the Council of State, within ten days after the close of a council session, to annul a given council vote on grounds of violating some national law or ordinance. Although such action by the prefect suspends the application of the council's decision, it becomes effective unless the supreme administrative tribunal decrees its annulment within six weeks. The effect of this new rule has been greatly to strengthen local autonomy. Today the only important decisions of the council for which express approval from above is necessary are the following: (a) bond issues maturing in more than thirty years, which require the approval of the Council of State; (b) special tax levies in excess of the amount fixed by the national finance act, which require ministerial consent; and (c) the establishment and operation of regional railways, which entail legislative or administrative approval, depending upon the character of council action.

*The departmental standing committee.* Meeting ordinarily but twice a year, for six weeks at the most, the general council alone could scarcely maintain anything like a continuous surveillance over the prefectural executive. For the purpose of providing the council with a year-round instrument of control, the Law of 1871 created a third organ of departmental government which was destined to attain a capital importance. This is the *commission départementale*, a small standing committee of the council elected annually by and from its membership. So far as possible, this committee includes a member chosen from among the councillors representing or living in each *arrondissement*. The law, however, set definite limits to its size, which must not be less than four nor more than seven members. The election normally takes place at the end of the autumn session of the council.

Nevertheless, in case of deadlock between the committee and the prefect, if the council supports the latter's position, it may, upon his invitation, name a new committee. Any member of the council is eligible to serve on the committee unless he is at the same time a senator, a deputy, or a mayor.

Like the full council, the *commission départementale* holds its meetings at the *Hôtel de la Préfecture*. It must convene at least once a month, while either the prefect or its chairman may call extra meetings at any time. The committee chooses a chairman and secretary at the first meeting after its election. Since the committee is intended to serve as a "bridge" between the elective assembly and the prefect, its deliberations are not public, nor are its minutes communicated to the press. The prefect has the privilege of attending the meetings, which may last as long as the committee desires, but his presence is not obligatory.

From the standpoint of their source, the *commission départementale* possesses two kinds of powers: (a) those conferred directly upon it by law and (b) those delegated to it by the council. In the first category, the most important function is the control and surveillance of the prefect, especially with respect to the departmental budget. Ten days before the opening of the autumn session of the council the prefect must submit to the commission his annual budget report. The commission examines its contents and formulates recommendations to the council on the prefect's proposals. Ordinarily, in acting upon the budget, the council gives special consideration to the committee's report, not infrequently adopting its recommendations rather than the prefect's. Once the budget is voted and approved, the committee conducts a month-by-month quasi-audit of expenditures. For this purpose the prefect is required to submit a detailed report of all payments made during the preceding month. If there appears to be any irregularity, the committee's chairman may call it to the attention of the president of the council, as well as the Minister of the Interior, who can order an investigation if necessary. In addition, the committee goes over the annual administrative accounts of the prefecture and submits a report on them at the autumn meeting of the council.

It is also part of the standing committee's job to scrutinize the annual inventory of the department's office equipment and other supplies, and to check up on the condition of its records (*archives*). Before

any contract can become legally binding, it must bear the committee's official stamp of approval. We have already indicated that in case of urgency the prefect may institute a judicial action in the name of the *département* only with the committee's explicit authorization. The committee may also convene a special session of the council at any time.

As a control agency, the departmental committee deals with certain communal matters. For instance, it pronounces judgment upon all proposals emanating from municipal councils regarding the opening, width, length, reclassification, and closing of tertiary roads and lanes (*chemins vicinaux ordinaires*). It also distributes among the communes certain fees and fines which are collected by the courts and the departmental authorities. Finally, at each April session of the council, the committee presents a report on all special tax levies and borrowing operations conducted by the communes during the preceding fiscal year ending December 31st.

We come now to the committee's "delegated" powers. The law itself sets no limit either to the subject-matter or to the condition of such delegation. Nevertheless, the courts have held that it must refer to specific items and be temporary, i.e., *ad interim* of council meetings. Nor may the power to impose a tax or appropriate money be delegated. If the council reaches the end of a regular session without having completed its agenda, it may authorize the standing committee to act upon specified urgent matters. In addition, the law permits certain "tacit" delegations of power, notably, for the distribution of subsidies to private charities or communal agencies, the determination of the priority of public works projects, and setting the date and conditions of departmental loans, when these decisions have not been made by the council itself. In all such cases, however, the prefect's opinion must be heard before the committee may legally act.

Since most of the powers now exercised by the *commission départementale* formerly belonged to the prefect, the committee has become an important means of decentralizing control over departmental affairs. Since 1926, in particular, it has been able to impose upon the appointive agent of the state a much more effective control than was previously possible. What with an increasing tendency on the part of the council to reëlect committeemen year after year, there is now a nucleus of members with extensive experience in the department's

fiscal and administrative business. If this group keeps on the alert and has the confidence of the community, it can hold the prefect to a sense of local responsibility almost as great as if he were himself chosen by the departmental assembly.

*Sec. 6. The Structure and Powers of Municipal Government*

The communal council enjoys a far wider degree of control over municipal policy and its administration than does the departmental council over prefectural affairs. It is the council that chooses from its own membership the titular chief executive of the commune. Not only is there this fundamental difference between the set-up of the two levels of local government, but, as has already been noted, the mayor's administrative collaborators (*adjoints*) also emanate from the assembly of people's representatives.

*The municipal "legislature."* The communal council is a body varying in size from ten to thirty-six members, in accordance with the following scale laid down by the municipal code of 1884:

<i>Communes with a Population of</i>	<i>Size of the Council</i>
500 or less	10
501 to 1,500	12
1,501 to 2,500	16
2,501 to 3,500	21
3,501 to 10,000	23
10,001 to 30,000	27
30,001 to 40,000	30
40,001 to 50,000	32
50,001 to 60,000	34
60,001 and above	36

An exception is made for Paris, which has a council of 90 members, as well as for Lyons, which is allowed 57 members.

Every council must hold four sessions a year—in February, May, August, and November. The session at which the annual budget is considered may last six weeks; the others are limited to two weeks each unless a longer time is authorized by the subprefect. The council may be convened at other times whenever the mayor, prefect, or subprefect deems it desirable, or a third of the members so request.



Sessions nearly every month are the practice in most of the larger cities. All sessions are held at the town hall (*hôtel de ville*) and are presided over by the mayor, or, in the event of his absence, by one of the *adjoints*.

Broadly speaking, the rules governing publicity of deliberations, secret sessions, quorums, methods of voting, and the record of what happens are the same as for the departmental councils. These details need not, therefore, be restated. Suffice it to say that after the election of a new council in May, its first duty upon convening later that same month is to choose a mayor. For this purpose the member longest in service acts as temporary presiding officer. The vote takes place by secret ballot without any formal nominations. On the first two ballots an absolute majority is required for election. If no one receives such a majority, a third ballot is taken, when a plurality is sufficient. Except in the small rural communes, the council usually divides along partisan lines in choosing a mayor. In the larger municipalities he is nearly always a prominent party leader, oftentimes a member of Parliament as well. The mayor's term coincides with the term of the council, which, since 1929, has been six years.<sup>12</sup>

As soon as the mayor is chosen, he takes the chair and proceeds to conduct the election of the *adjoints* by the same method. The council then designates one or more of its members as secretaries for the duration of the session. If it wishes, it may set up committees to study and report on various questions submitted to it. In the larger metropolitan communes, standing committees are extensively utilized in order to expedite the digestion of the complicated mass of municipal business. These committees do their work (holding hearings and conducting investigations) between sessions of the full council. While the mayor is ex-officio chairman of all such committees and calls their

<sup>12</sup> It was formerly four years. Although the mayor may be suspended by the prefect, or removed from office by national cabinet decree, this disciplinary power is rarely invoked. The reasons for suspension or removal must be indicated in the order. Moreover, the mayor has the right to appeal to the Council of State to annul the ouster. A recent case of removal was that of Jacques Doriot, "fascist" mayor of St. Denis, a suburb of Paris, who was ousted by the Blum Government in May 1937 for irregularities in the letting of municipal contracts. The action, however, was subsequently nullified by the Council of State because it did not fully conform to the procedure laid down by the municipal code.



first meeting, they elect from their own membership vice-chairmen who subsequently preside over their deliberations.

The powers and duties of the municipal council are set forth in a series of articles which form the most important section of the municipal code of 1884.<sup>13</sup> This section begins with the following declaration: "The municipal council shall regulate, by its deliberations, the affairs of the commune." Taken by itself, this would appear to constitute a strikingly broad grant of powers. Subsequent articles, however, not only lay down specific restrictions but impose conditions on the way in which the powers may be exercised. The net result is really a series of enumerated powers over most of which a varying degree of central supervision exists. Despite recent enlargements in the scope of municipal liberty, especially since 1926, French cities are still far from enjoying any extensive degree of "home rule." Just how much autonomy they now possess will appear from a concrete classification of the council's prerogatives.

*Powers of communal councils.* Procedurally considered, council powers cover four kinds of acts: (a) giving obligatory advice, (b) registering protests, (c) voluntarily expressing opinions in the form of resolutions (*vœux*), and most important of all (d) making decisions (ordinances, tax levies, appropriations, etc.) having the force of law, either independently or upon approval by a higher authority.

(a) In its advisory capacity the council is obliged to render an opinion to higher officials on certain specified matters. These include the alteration of municipal boundaries, the routing of arterial highways through cities and villages, the administration of poor relief, the financial management of state-controlled charitable institutions and their right to accept gifts and legacies. In addition to these enumerated items, the central government may instruct the prefect to secure the council's advice upon any other question before official action is taken thereon by the state. Such advice, however, does not in any case have to be heeded. Furthermore, if a council fails or refuses to give an opinion, the higher authorities may go ahead and make their own decisions anyway. Since, however, it is to the interest of the municipality to let its opinion be known, few councils neglect to use these advisory powers; and the national and prefectural authorities usually

<sup>13</sup> See arts. 61-72.

give considerable weight to the council's point of view if it is intelligently formulated.

(b) The second type of action is confined to the entering of a formal protest against the quota of direct taxes assigned to the commune by the departmental authorities. This right of protest is utilized in comparatively rare instances and really has little practical importance.

(c) The council is free to discuss any matter of *local* interest and, if it desires, to pass a resolution indicating its views. Hundreds of these *vœux* on a wide range of subjects issue from French municipal councils every year, but few of them are taken very seriously. According to the text of the municipal code, a council must not concern itself with any aspect of national or departmental politics, and, above all things, "must not indulge in any criticism of the policy or actions of the prefect, or of any other national authority. . . . But the rule against political discussion is widely honored in the breach. When a councillor is at the same time a member of the Chamber of Deputies it is virtually impossible to keep him from provoking a discussion of politics. And no matter what the laws may provide it is not often wise to discipline him for so doing." <sup>14</sup>

(d) By far the most extensive and important part of the council's work consists of actions having the force of law. In the absence of legal provision to the contrary, such decisions are "self-executive"; that is, they do not have to be approved by any higher authority. Within fifteen days following publication, however, the prefect may annul the decision if he finds that any councillor who was personally or financially interested in the action took part in the discussion or vote. What is more, any action of the council may be declared null and void by the prefect *at any time* if, in his opinion, it violates a national law or administrative ordinance. This step may be requested of the prefect by any interested citizen. As a safeguard against the arbitrary exercise of authority by the former official, the council or any interested party may appeal to the Council of State to invalidate the prefectoral order as *ultra vires*.

While the range of matters upon which the council may independently act has gradually been widened during the last half century,

<sup>14</sup> Munro, *op. cit.*, p. 272.

they are still unimpressive in comparison with the functions freely exercised by the councils of American cities. The municipal code lists twelve important types of action which require the approval of some superior authority before they can become effective. These functions fall into four major groups: (1) the purchase, mortgaging, selling, or leasing of municipal property; (2) the appropriation of money, the fixing of tax rates, the borrowing of money, and the granting of concessions; (3) the establishment, naming, alteration, and closing of municipal streets, squares, parks, and gardens; and (4) the intervention of the commune in the domain of public utility enterprises, whether by direct operation or subsidy to private concerns, including, as types of activity, the supply of food, housing, welfare, or health services, or urban beautification. In the aggregate these functions constitute the very heart and substance of municipal activity.

Although the character of the control over their exercise varies from item to item, it is the prefect (or subprefect in the case of small rural communes) who must grant approval except where specific statutes or administrative ordinances prescribe that it must be given by the departmental council or commission, by a minister, or by the national cabinet or Parliament. Approval by a different authority from the prefect (or subprefect) is the exception and not the rule. If approval is refused, the municipal council may appeal to the Minister of the Interior for reconsideration. Until 1926 specific approval was necessary in every instance. The reform legislation of that year, however, authorized "tacit" approval in the following sense: if the prefect (or subprefect) does not indicate his disapproval within forty days after the council has voted, the measure shall be considered as having been approved. Similarly, where control by a national authority is provided, no action within three months is equivalent to approval.

In certain special instances, where the municipal council fails to act as required by law, the supervisory authority may take action on its own initiative. For example, if appropriations made mandatory upon the municipality by the state are not included within the budget, the prefect may legally insert them himself. Or, in case the annual budget is not passed by the opening of the fiscal year, the prefect has the power to put into effect a budget of his own making. Recently the

national government, with a view to forcing economies in municipal finance, gave the prefect the power to balance any budget which, after two successive considerations by the council, was still out of balance.<sup>15</sup> Also, in cities of over 10,000 population, the failure of the council to authorize the establishment of a labor placement bureau may be remedied by a prefectural order.<sup>16</sup>

There is still a further type of control over the municipal council that may be invoked in emergencies or political deadlocks. To the prefect is reserved the power to suspend the council for not more than a month. If this action proves to be an inadequate sanction against a recalcitrant council, the prefect may ask the national government to dissolve it and order new elections. During the intervening period a special commission of three to seven members, appointed by the Minister of the Interior, passes upon urgent municipal business. A new council must be elected within two months.

Although the intent of so drastic a disciplinary power is to compel the "city fathers" to do their duty according to the law, there has been some temptation to use it as a "political pressure" weapon when the prefect finds himself in bitter conflict with the council over financial matters, or when the government desires to stop local manifestations hostile to some national policy. Once again, however, the protective arm of the Council of State, to which an appeal may always be taken, prevents serious abuse of this power of dissolution. In a series of notable cases the supreme administrative court has annulled several dissolution decrees because they were motivated by political considerations or personal vindictiveness.<sup>17</sup>

*The mayor and his "official family."* The position of the French mayor differs considerably from those of his American and English counterparts. As an appointee of the council, he retains full voting membership in that body even while presiding over its deliberations. Although he possesses no veto power over its official acts, the council can not force him out of office. Like other members of the council, he receives no salary, but the municipal code permits the council to

<sup>15</sup> Decree-Law of 28 Aug., 1937.

<sup>16</sup> Law of 10 July, 1903.

<sup>17</sup> In 1902, 1911, and 1923.

grant him an allowance to cover his "official expenses," and in the big cities this allowance reaches substantial proportions.<sup>18</sup>

Despite, or perhaps because of, the quasi-honorary character of the mayor's office, it has acquired a prestige little short of remarkable, and has attracted some of the ablest men in French public life. "France," recently commented a distinguished political observer, "has had more great mayors than prime ministers."<sup>19</sup> It may be that the preëminence of French mayors is in no small part due to the unbroken longevity of service that the best of them enjoy—in sharp contrast to the rapid turnover of national ministers! Not only is the mayor initially chosen for a fixed term of six years, but in most large communes it is customary to reëlect the same man so long as he is willing and his party coalition retains a majority in the council. Perhaps the most famous case of uninterrupted tenure is that of Edouard Herriot, who has served as mayor of Lyons, the third largest city in France, for a third of a century. Meanwhile, he has been continuously a deputy, the official leader of the Radical Socialist Party for much of the time, a minister in several cabinets, twice president of the Chamber of Deputies, and three times prime minister of France—a truly distinguished and inveterate "commuter" between Paris and his home city! Other notable mayors, with many years of service, include Marquet of Bordeaux; Gerard of Dijon; Henri Sellier of Suresnes, famous for his municipal housing projects and Minister of Health in the Blum Popular Front cabinet of 1936; and Marchandau of Reims, formerly Minister of Finance, who superbly directed the physical reconstruction of his war-shattered municipality.

Other examples might be cited to show how important a figure the mayor may be, not only locally, but in national politics as well. For he does not have to resign parliamentary office while serving as municipal executive. There is no more influential group of members in the Chamber of Deputies than the "mayors' bloc," which seldom numbers less than fifty and often runs as high as eighty. In the

<sup>18</sup> Ordinary council members are entitled to a fixed per diem compensation for attendance at its sessions and committee meetings, plus a travel allowance. By special authorization, members of the municipal council of Paris have voted themselves an annual salary of 12,000 francs. Law of 29 Dec., 1926.

<sup>19</sup> R. Valeur, "French Government and Politics," in *Democratic Governments in Europe* (New York, 1935), p. 358.

Chamber for the term 1932-36, for example, there were sixty mayors, among them the executives of the following important cities: Lyons, Bordeaux, Havre, Lille, Amiens, Reims, Tours, Rouen, and Grenoble. "France," once remarked Maxime Leroy, "is really governed by 30,000 mayors."

For nearly twenty years French mayors have been organized in a national association which maintains a permanent secretariat in Paris and has a total membership of over 2,000 (chiefly from the larger communes). This organization publishes a monthly bulletin, holds an annual congress, and conducts studies of economic, administrative, and fiscal problems facing French cities.<sup>20</sup> As a result of the association's efforts, important legislation granting funds to cities for relief and public works has been enacted by Parliament during recent depression years.

Regardless of the uniform grant of powers to the 38,000 communes, the mayor's local authority varies tremendously, depending upon the importance of the commune. In rural areas he is usually the village doctor or chief landowner and carries on the simple operations of rural government with the aid of only a *secrétaire de mairie*. For the latter post the services of the elementary school teacher (*instituteur*) are ordinarily drafted—without protest on his part, because it adds a few hundred francs to his regular salary. More than 20,000 communes make use of the village teacher in this fashion. Where the population of the commune does not exceed 2,500, the law authorizes the council to designate one assistant (*adjoint*) to the mayor, but this is seldom done in communities of only a few hundred inhabitants. Aside from the village secretary, the only full-time local employee is a constable (*garde-champêtre*). Contrast this simple situation with the great metropolis, where the operations of government are differentiated into scores of administrative departments, services, and institutions, requiring thousands of staff employees, and the differences in the mayor's job as local chief executive are easily understood.

As originally adopted in 1884, the municipal code allowed communes ranging from 2,500 to 10,000 in population to appoint two *adjoints*, with one additional *adjoint* for each 25,000 additional popu-

<sup>20</sup> The proceedings of the annual congress are published and may be obtained from the office of *l'Association des Maires de France*, 28 Rue Louis-le Grand, Paris (2).

lation. By an amendment enacted in 1923, however, the municipal council may establish supplementary *adjoints*, provided the total number does not exceed one-third the number of councillors, or twelve in all.<sup>21</sup> There is a distinct tendency to choose for the post of *adjoint* men who have had prior service on the council and previously acted as *adjoints*. Following the order in which they are appointed, they deputize for the mayor in case he is prevented by illness or absence from performing his official duties. Since, however, the mayor alone is responsible for the tasks of administration, their powers in this respect are exclusively delegated. He has complete discretion in distributing among them the supervision of municipal services, although it is customary for an incoming mayor to continue *adjoints* in the same department from one term to another. This permits the development of experience in handling specific functions, such as streets, parks, sanitation, fire protection, or water supply.

In mountainous regions where communication between communal headquarters and the outlying territory is difficult, the council may, with the permission of the Council of State, designate an *adjoint special* to maintain a branch office of local government in the isolated area. The functions of this *adjoint*, however, are strictly limited to such matters as the registration of births, marriages, and deaths, and the execution of safety and sanitary measures.

*The mayor as chief executive.* We are now ready to examine the powers and duties attached to the office of mayor. Like the prefect, he is at once a local official and an agent of the central government. By way of contrast with the prefect, however, the mayor's rôle in the former sense is much more important than in the latter.

(a) As executive head of the commune, the mayor appoints all strictly municipal employees, without confirmation by the council, but in so doing he must conform to the personnel code now obligatory in every municipality. Under the provisions of this code, he may dismiss an employee only upon recommendation of a disciplinary council on which the staff is represented.

(b) With the aid of the *secrétaire de ville*, his *adjoints*, and the permanent administrative heads of the various municipal services, the mayor prepares the annual budget. The law of 1884 stipulates that this

<sup>21</sup> An exception to this limit is made in the case of Lyons.



must be drawn up in two sections: ordinary and extraordinary. In the first section are listed all annual and permanent receipts. The extraordinary items consist of tax levies specifically earmarked for the service of municipal bond issues on non-recurrent expenses and any other temporary items. On the appropriation side a similar distinction holds, expenditures for current operation and debt service being listed as ordinary and those for capital outlays and emergency items as extraordinary. A standard budgetary form for the entry of expenditure estimates is prescribed by decree of the Ministers of the Interior and Finance, with such functional chapter headings as the following: general administration (city hall, police, tax collections, justice of the peace, etc.), maintenance of municipal property, welfare and health, education, city streets, and rural highways. Specific items inserted as articles within each chapter run slightly over a hundred in all. As already noted, a large proportion of municipal expenditures is mandatory, including the upkeep of the city hall, the salaries of the municipal treasurer and certain other officers, the pay and equipment of the municipal and rural police, the administration of vital statistics, the registration of voters, the repair of local highways, and the compensation of school teachers.

At the May session of the council the mayor submits his budget, together with a separate report on the financial condition of the commune. The latter document must show actual receipts, expenditures, and loans incurred during the preceding fiscal year, ending December 31st, as well as total indebtedness. Before the council takes up the new budget, the mayor's accounts are subjected to careful scrutiny. While this goes on, the municipal executive must leave the council chamber, though he may be called in to explain specific aspects of his report. The council also has before it a second set of financial accounts prepared by the municipal treasurer (*receveur municipal*) who, in the larger communes, is appointed, not by the mayor, but by the national Minister of Finance, from a panel of three names proposed by the council. In addition to acting as custodian of funds, this official is required by law to audit all expenditure orders prior to actual payment. The mayor's accounts, therefore, should tally with the treasurer's report. Copies of both reports must be sent to the prefect (or sub-



prefect, in the case of the smaller communes), and to the Ministry of the Interior and Court of Accounts in Paris, for the larger municipalities, so that the latter agency may carry out a detailed post-audit.

Not until the council has thoroughly familiarized itself with the two reports, noted any discrepancies or evidences of lax financial management (uncollected taxes, unpaid bills, etc.), and formally accepted the reports, does it take up the budget for the ensuing fiscal year. In the urban communes the discussion of the budget lasts at least a month to six weeks and sometimes it is not voted until after the close of the fiscal year. For great cities like Paris, Marseilles, or Lyons, the budget report fills a volume of over 200 quarto pages. In all such cities the council maintains a standing committee on finance to which the budget is referred before being discussed by the council as a whole. Public hearings may be held and department heads called to testify as to the needs of their respective services.

Finally comes the vote of the budget. Each chapter and article is acted upon separately. The council is free to reduce, delete, increase, or add any item not of a mandatory character. While large lump-sum appropriations are not made, the mayor may, except where specifically forbidden by council vote, transfer funds from one article to another within the same chapter of the budget. It is also common practice to appropriate a fixed sum directly to the mayor for unforeseen contingencies. This fund, however, may not legally be used for any purpose for which a specific appropriation has been made. Not infrequently, because of miscalculations as to revenue yield or operating expenses, the council is obliged to authorize a *supplementary* budget during the course of the current fiscal year.

Immediately upon passage the budget must be submitted to the proper controlling authority. Where the ordinary receipts of a commune are less than 10 million francs, this authority is the subprefect of the *arrondissement*; otherwise it is the prefect. The latter official is required to insert any *obligatory* appropriations that may have been omitted or insufficiently provided by the municipal authorities; while he may reduce or eliminate *optional* items of expenditure (1) if the per capita direct taxes exceed the maximum index set each year by decree of the Finance and Interior Ministries, or (2) if the ratio of receipts

earmarked for debt service to total receipts is higher than the maximum similarly stipulated by Paris.<sup>22</sup>

(c) Equal in importance to the mayor's budgetary rôle is his police power. Under French municipal law, the scope of this power is exceedingly broad. It comprehends all measures necessary to insure public order, safety, morals, and health, not only within the centers of population, but extending over the rural portions of the commune as well.<sup>23</sup> Except in a few metropolitan centers and certain frontier or coastal cities of strategic military importance, local police administration falls under the control of the mayor.<sup>24</sup> This control, however, can be utilized only under the supervision of the prefect, who, in case of negligence by the mayor, may issue police orders on his own authority. The Minister of Interior appoints the chief municipal police officer (*commissaire de police*). In all communes of 5,000 or over, the appointment of at least one such commissioner is mandatory. Additional police commissioners may be authorized at the discretion of the minister for the more populous municipalities. Where there are several commissioners, one is assigned to act as *commissaire central*, or chief of police. Although chosen by the national government, these police commissioners act under the mayor's orders in respect to local traffic control, patrol duty, and the enforcement of safety and sanitary ordinances. A secondary category of commissioned police officers, called *agents*, is optional for cities less than 40,000 in size, but obligatory for all others. These officers are appointed by the mayor with the prefect's approval. Upon the former's recommendation, the municipal council may provide for such further subordinate police personnel (inspectors, sergeants, patrolmen, traffic officers, or rural constables) as is considered necessary for local needs. In the smaller communes the internal set-up of the police establishment, including assignment to duties, rates of pay, and discipline, is determined by the mayor with the council's authorization. Where the population exceeds 40,000, however, the controlling arm of the central government restricts the discretion of the

<sup>22</sup> These provisions were added by the Decree-Law of 23 Oct., 1935, in an effort to reduce municipal expenditures all over the country.

<sup>23</sup> See arts. 97-104 of the Law of 1884.

<sup>24</sup> The excepted places, where the central government has retained complete police jurisdiction, are Paris, Marseilles, Lyons, Strasbourg, Mulhouse, Metz, Nice, and Toulon.

local authorities in that the composition and standards of the municipal police force must conform to general rules laid down by decree of the Ministry of the Interior.

Underlying the entire local police system is the proposition that in proportion as the task of maintaining civil order and regulating public morals and health becomes more difficult, the central authorities should assume greater responsibility for insuring its proper performance, correspondingly less discretion being left to mayor and council. Largely because it is so strictly supervised from above, local police administration has been singularly free from politics, graft, and corruption.

(d) For convenience we may group the remaining powers of the mayor as a local official under the general head of administrative direction and ordinance-making. Broadly speaking, he is responsible for applying all resolutions adopted by the council in so far as they require executive action. By way of illustration, it is his duty to keep all streets and highways in good condition, to see to it that municipal property is properly managed, to supervise public works projects, and to authorize contracts for the purchase of supplies and equipment, as well as for the acquisition or sale of all land and buildings needed by the municipality. For such purposes the mayor may transmit instructions to the appropriate departmental heads and bureau chiefs, and, subject to the council's budgetary control, create or alter administrative agencies, or transfer functions from one service to another, as he sees fit.

On his own initiative the mayor may also issue ordinances having to do with such matters as public safety, morals, inspection of food, water, and private buildings, the speed of motor cars, snow removal, licensing of dogs and peddlers, and so on. The provisions of such ordinances may not, however, contravene the general laws or any restrictions laid down by the local council. Within these limits the mayor may be said to possess a "sub-legislative" authority which, because of the pronounced tendency of French law-making bodies to legislate in terms of broad, general standards, gives him much wider executive discretion than is possessed by the typical American mayor or city manager.

So far, we have been concerned with the mayor's powers as head of the communal government. But he also serves as an executive agent for the central government. In this connection he is charged with the

publication and application of all *national* laws and ordinances affecting the local community. Whenever a new law is passed by Parliament, the proper authorities in Paris transmit its text to the prefects throughout the country and they in turn pass it along to each mayor within their jurisdiction. The mayor must then have an official copy of the act posted on the municipal bulletin board in the *hôtel de ville*, as well as at certain other points in the larger cities. If a local ordinance is necessary to put the law into effect, the mayor must issue it. There are in addition certain special operations for which the mayor has been made continuously responsible by various national statutes, such as the registration of births, marriages, divorces, and deaths (*état civil*), the maintenance of voters' registration lists, the posting of the names of recruits called up for compulsory military service, and surveillance over the assessment and collection of direct taxes, schools, insane hospitals, and jails. If the mayor fails or refuses to perform any of these ministerial acts, the prefect may call them to the former's attention and then, if necessary, order them done himself.

Whether emanating from his position as local official or as agent of the central government, the mayor's ordinance power is always subject to judicial review by the Council of State. Simply by sending to the high administrative court a tax-registered petition, any interested party, private citizen or municipal employee, may secure an investigation. No expense is involved in this procedure except a filing fee amounting to a few francs. The complainant does not have to appear at the hearing, which takes place in Paris, or even employ counsel. The whole matter is handled on a remarkably convenient and expeditious basis. If the court finds that the mayor has exceeded his legal authority or used it in an arbitrary manner, the act (decree or ordinance) may be annulled. The fact that hundreds of such acts are invalidated in this fashion every year demonstrates what a strong protection is enjoyed by the taxpayer against local abuses of power, thanks to the vigorous development of French administrative jurisprudence. At the same time, the mayor himself may appeal to the court with a view to having the veto of any of his own acts by the prefect nullified. In other words, this judicial review works both ways.<sup>25</sup>

<sup>25</sup> For a fuller discussion of French administrative jurisprudence, with the citation of specific cases, see Sharp, *op. cit.*, Ch. X.

Although in France the ordinary courts have no power to review administrative acts, they can, in individual cases, refuse to apply penalties imposed by local police regulations which in the judges' opinion have been illegally issued.<sup>26</sup> Such judicial action, however, does not have the effect of generally invalidating the ordinance.

### *Sec. 7. The Municipal "Bureaucracy"*

The type of administrative management to be found in French cities presents interesting points of comparison both with American and with English practice. As we have already seen, there is no clear-cut "separation of powers" between policy-making and administrative authorities. The council chooses from its own membership a small administrative cabinet of "amateurs"—mayor and *adjoints*—whose duty it is to supervise and coördinate the work of the professional administrative personnel of the city government. The council has no power to recall these supervisory officials before the expiration of their terms, nor, for that matter, to appoint or remove a single administrative employee of the city. Furthermore, the law has conferred upon the mayor important ordinance powers which he can exercise on his own responsibility. At the same time, because it owes its election to the political majority in control of the council, the municipal cabinet can not long pursue policies with which this majority is out of sympathy. What is more, the council can always utilize its appropriating power as a means of keeping the executive branch in general accord with its wishes. In somewhat similar fashion to the English borough councils, most French municipal assemblies maintain standing committees on the major functional divisions of city administration. Between council sessions these committees meet frequently at the call of the mayor, who is *ex officio* chairman of each. Whenever necessary, they may call in the *adjoint* or any permanent official for questioning. Each committee selects one of its more experienced members to act as *rapporteur*. It is his task to formulate a report summarizing the committee's observations and present it to the council at the next session. The council is thus able to keep a fairly continuous watch over the processes of administration, as well as to influence and advise the officials who manage the city services.

<sup>26</sup> As provided by Article 471 of the Penal Code.

The real work of administration is performed by a corps of professional officials and employees, all of them selected according to merit and enjoying security of tenure. The number of these full-time municipal employees ranges from 3,000 to 4,000 for cities of around 200,000 population up to nearly 60,000 for the metropolis of Paris. While complete data on aggregate municipal personnel for the entire country are not available, the total is roughly estimated at from 250,000 to 300,000. Probably two-thirds of this total is concentrated in the seventeen cities of over 100,000 inhabitants each, while in the 30,000 predominantly rural communes there cannot be more than 50,000 permanent employees altogether. Nowadays personnel costs absorb from 30 to 60 per cent of the entire operating expenditures of the larger French cities.

For a fully complete picture of the size of local public service staffs, the employees of public utility enterprises operating under municipal franchise, both with and without municipal participation in their management, should be taken into account. No accurate compilation of the employees of such enterprises is at hand, but for companies supplying the city of Paris with three basic utility services, the totals were approximately as follows in 1934.<sup>27</sup>

Gas	10,000	} 26,000
Electricity	4,600	
Subway	11,400	

As previously indicated, national law has since 1930 required every commune throughout the land to operate under a civil service ordinance either of its own making or in accordance with a standard set of rules (*règlement-type*) drawn up by the Council of State.<sup>28</sup> Most of the larger cities had set up merit systems many years prior to the passage of this national legislation. Its purpose was to extend to local administration everywhere the principle of competitive recruitment, systematic promotion procedures, and guaranties as to security of employee

<sup>27</sup> As reported in E. Raiga and M. Félix, *Le Régime administratif et financier du Département de la Seine et de la Ville de Paris* (2nd ed., Paris, 1935), vol. I, p. 33. This is the standard treatise on the government of the French capital.

<sup>28</sup> See Part II, B, for the text of these rules (in English translation), as revised by decree of 6 January 1938.

tenure.<sup>29</sup> Within the limits set by the law of 1930, each commune is free to develop its own personnel system, subject always to prefectoral approval.

In the typical municipality of 100,000 population or over, staff personnel is classified broadly in three grades: (a) administrative, (b) technical, and (c) labor. Standing highest in the first grade are the municipal secretary, who heads the entire hierarchy, a dozen or so directors of service, and various bureau chiefs. These officials constitute the permanent managerial corps, i.e., the heads of the various departments and lesser units into which the city administration is divided. Below this group, but still a part of the administrative grade, come the minor executive and clerical personnel—clerks, bookkeepers, stenographers, etc.—consisting largely of women. The technical grade includes a wide variety of such professional specialists as engineers, architects, inspectors, welfare administrators, health and housing experts. Within the third category are to be found the skilled and unskilled workers, foremen as well as ordinary laborers, who make up the rank and file of city employees.

Somewhat like the English town clerk, the municipal secretary (*secrétaire de la ville*) performs in part the functions of the head of a division of "general administration." In this connection, he supervises the office staffs located within the city hall, sees to it that all official records are properly kept, receives and transmits thousands of communications from and to the higher authorities, prepares orders for the mayor's signature, and draws up proposals for submission to the council. In all metropolitan centers, a weekly bulletin containing the text of all laws, decrees, orders, and notices affecting the commune is published by the secretary's office.<sup>30</sup> In the larger cities, also, there is a special bureau, under the direction of the secretary, for handling the technical phases of personnel management. The rest of his staff is typically divided as follows: (a) secretariat; (b) vital statistics bureau (registration of births, marriages, divorces, deaths, and census); (c) military bureau (recruitment, registration of horses and vehicles,

<sup>29</sup> The first act, passed in 1919, applied only to communes of 5,000 population or over. The following year (1920) Parliament put the administrative personnel of the *départements* under similar protection.

<sup>30</sup> In certain cities this bulletin is issued in two editions, one of which, appearing less frequently, contains the full council proceedings.



requisitions, housing of troops); and (d) supervision of the municipal and administrative police. The collection of revenues, custody of funds, and payment of moneys, however, come under the jurisdiction of the municipal treasurer.

Although the method of his appointment varies, the municipal secretary is nowadays always a career man. In the larger cities he is chosen by the Minister of the Interior from a list of three names submitted by the municipal council; in smaller communes, by the mayor with the approval of the prefect. In so far as there is any permanent, full-time headship in city administration, it is to be found in this "chief of staff." The mayor and the *adjoints* may come and go, but the secretary must be always on the job.

With the exception of ordinary laborers, the initial recruitment of municipal employees is by open competitive examination. For clerical, executive, and junior technical positions, a formal written examination is used, supplemented, in certain cases, by an oral interview. For the more important technical posts, selections are made after scrutiny of professional training and experience, due weight being given to recommendations as to individual competence and character. For all positions filled from the outside by assembled competitive examination, applicants must be French citizens of 21 to 30 years of age and able to produce a certificate of physical fitness from the municipal medical commission. The council determines those types of city employment open to women, i.e., clerical positions, public health nursing, case workers, and teachers in nursery schools and kindergartens. Although most cities tend to give preference to local residents, there is no legal bar to appointing non-residents. Until the recent economic depression, it was the practice to select men of outstanding achievement from the civil service of other cities and thus widen career opportunities in municipal work. At the present time, however, the bars for non-residents are almost insuperable in many of the larger jurisdictions.

By a national law passed shortly after the World War, French municipalities were obliged to reserve to partially disabled veterans at least one-half of the vacancies occurring in the lower grades of municipal employment, while three-fourths of the positions open to women were reserved to widows of ex-service men. Up to the present this type of veteran's preference has not affected the quality of subordinate



personnel as adversely as Americans might suppose, for the simple reason that pensioned veterans have constituted a substantial proportion of the adult population in every community. But with the age distribution of veterans (and their widows!) growing older all the time, it will soon be necessary to reduce the extent of veteran's preference if the standards of municipal employment are not seriously to suffer.

When vacancies occur for which a competitive examination is necessary, notice of the time, place, and character of the examination, and the salary to be paid, is posted on the official bulletin board and sent to the local press. An examination "jury," including the mayor or an *adjoint* as chairman, two persons named by the council, a division or bureau chief, a representative of the staff association concerned, and the municipal secretary, is appointed to conduct the examination. Ordinarily, the subject-matter of the written tests is determined by the personnel bureau after consultation with the heads of the services concerned, although, legally, the examination board has the power to set such tests as it sees fit, as well as to fix the relative weight to be given to training, experience, and other factors. Far more than is customary in American practice, French civil service examinations stress general educational qualifications. The more specialized the duties of a position are, however, the more specific the subject-matter of the test becomes.

After grading the papers and holding interviews (if considered desirable), the jury draws up a list of eligibles in order of merit and submits it to the mayor's office. It is customary to limit the number of names to no more than the number of vacancies likely to occur during the ensuing two years. All appointments are probationary for a period of six months to a year, following which, depending upon the recommendation of the head of the service concerned, they become permanent, or a further probation period is prescribed, or the candidate is discharged. In case the examination jury refuses to certify any eligibles, the mayor may fill immediate vacancies from available registers in other governmental jurisdictions.<sup>81</sup>

Within each general grade of employment, promotion takes place

<sup>81</sup> Many cities have established special ordinances governing the recruitment, pay, and promotion of the personnel of police and fire departments; but the basic pattern varies only slightly from the general ordinance.

from one class to the immediately superior class. Similarly, initial appointments are always to the minimum salary level for the class. The regulations governing salary increases and promotions tend to be so rigid that employees of outstanding ability can seldom jump a hurdle. The reason for such rigidity lies in the effort to eliminate the insidious influence of personal favoritism and nepotism, which, until comparatively recently, were rampant in French municipal administration. Promotion boards set up for each major division of the city service annually prepare priority lists for advancement in salary and class. For the former, seniority is the predominant factor, quasi-automatic increases being granted after a minimum period of service at each level. As a disciplinary measure, the award of any given increment may be postponed a year or more. For promotion in rank, individual service records are given major consideration. When the supervisory grades are reached, the mayor and his cabinet are theoretically free to select whom they will, even to going outside the career hierarchy and bringing in fresh blood. In practice, the "closed system" prevails. It is rare for a man to receive a bureau headship or departmental directorship until he has passed forty and the average age tends to be about fifty. Even though slow turnover produces a slow rate of promotion, except in periods of staff expansion, advancement for the meritorious employee is reasonably sure and not dependent upon political "pull" or personal favoritism on the part of his superiors. It should also be noted that in many of the technical services promotion from the ranks is made only by special competitive examination.

It is in the disciplinary provisions of French municipal civil service regulations that one finds the most elaborate procedure designed to protect employees from unfair treatment. The impetus for this protection has come from the powerful staff associations (*syndicats*) through which the subordinate personnel groups have long carried on concerted agitation and propaganda in defense of their economic and professional interests.<sup>32</sup> Except in the case of minor offenses calling merely for an oral warning or a written reprimand, which may be made by the

<sup>32</sup> See the writer's treatise on *The French Civil Service: Bureaucracy in Transition* (New York, 1931), Ch. XV, for an account of the rise and significance of this "administrative syndicalism." French municipal employees are organized on a national scale by types of employment.

mayor, the imposition of disciplinary penalties must be preceded by a hearing before a regularly constituted council of discipline and conform to its recommendations. The national municipal code prescribes the establishment of two or more such councils in every *département*, the number and the territorial jurisdiction of each council being fixed by prefectural order.<sup>33</sup> These councils consist of three mayors or *adjoints* or municipal councillors, representing the policy-making authorities, and three civil servants drawn from a panel of six elected by the staff personnel in the particular category of employment to which the defendant employee belongs. To insure as much objectivity as possible, it is further provided that the entire membership of the council, in a given case, must come from communes other than the one in which the case arose. The council is presided over by the justice of the peace longest in office within the canton.

The penalties which may be recommended by the disciplinary council are set forth in the law. In order of severity, they include the following: total or partial cancellation of annual leave on pay; delay in salary advancement up to four years; reduction of salary; demotion in class or grade; suspension not to exceed six months; and outright dismissal. An employee against whom charges are brought has the right to appear in his own behalf, as well as to employ counsel (though this is seldom done). During the council's deliberation on the charges, however, the defendant may not be present. In case of grave delinquency, the mayor may suspend an employee without waiting for the disciplinary body to act, but if the latter recommends a less drastic penalty or none at all, the employee is entitled to full pay during the period of suspension.

In all communes of 10,000 population or over, any reduction of staff entitles the affected employees to be transferred to comparable positions in other services if and as vacancies occur, together with partial compensation during the period of lay-off.<sup>34</sup> Here again may be noted the effect of organized staff pressure on Parliament for the protection of employee "rights."

Most disinterested observers agree that, while the setting up of these procedural guaranties has helped to rid the municipal civil service

<sup>33</sup> Article 88 of the Law of 1884.

<sup>34</sup> Law of 12 June 1929.

of political interference and discriminatory personnel practices, it has not always aided efficiency and economy. Simplification of procedures, the introduction of machine equipment for office work, and other operating improvements, would probably come more quickly if unnecessary jobs could be eliminated outright. Nor is the problem of the mediocre, lazy, or indifferent employee beyond middle age any nearer a satisfactory solution in French than in American local administration.

Where municipalities have established a systematic retirement system, the latter situation is considerably alleviated. It is then humanely possible to dispose of "stagnant" employees before advancing age has rendered them completely worthless. Although not required by national law, all the larger French cities have created pension funds to which both employees and the municipality make joint contributions, following the general pattern of the official retirement system long in effect for national civil servants. Such funds usually cover prolonged illness and disability as well as old age. In communes where there is no retirement system, workers in municipal utility enterprises are covered by national legislation for workmen's compensation and industrial old age pensions.

Space permits but brief comment on such matters as hours of work, sick and vacation leaves, compensation for overtime, and family bonuses. Suffice it to say that while the basic rate of pay for municipal work would be considered low in terms of American standards, salary ranges tend to conform to what prevails in the French national service.<sup>35</sup> Furthermore, all local employees with dependents are now required by national law to be granted supplementary allowances which increase with each additional child. They are also the beneficiaries of other modest perquisites, such as reduced fare on railways and buses, to which the employee's entire family is entitled. Many industrial centers, especially where the Left parties control local politics, provide several weeks' leave on full pay for women employees before and after childbirth. The duration of the work-day and week has likewise been in line with the liberal regulations governing the national civil service. Under the terms of the Blum forty-hour week reform of 1936, how-

<sup>35</sup> By national decree issued 2 May, 1938, it was prescribed that the rate of pay for local government employees may henceforth not exceed that for comparable work in the national civil service.

ever, all local jurisdictions now are legally supposed to abide, in principle at least, by its provisions. Nevertheless, the attempt to apply them has created so many difficulties, in addition to increasing substantially the cost of local services, that important exceptions have been made by the national authorities.

All things considered, the professional quality of the French municipal service compares favorably with that of the better-governed American city. The higher administrative and technical positions attract an adequate quota of able men. As a result of the age-long traditions of "public service" which are a part of the French national heritage, plus the security of tenure now prevalent in municipal employment, it carries a higher social prestige than is the case in the majority of American cities. In the provinces, especially, local dignitaries are objects of popular envy and esteem. On the other hand, the French have only begun to appreciate the vital importance of in-service training for staff employees. One finds nothing fully comparable, for example, to the fellowship and internship program of the city managers' association and leagues of municipalities in the United States. Nevertheless, those cities in which French universities happen to be located do draw somewhat upon their facilities for holding special evening classes for staff groups. A belated realization of the training problem may also be seen in the establishment, a few years ago, of an *École nationale d'Administration municipale*. This school is attached to the Institute of Urbanism of the University of Paris. An increasing number of municipalities all over the country now grant leaves and special subsidies to outstanding younger employees in order that they may take advantage of the opportunities offered by this school. There is a growing tendency, moreover, to accord preferential treatment, in connection with promotions, to the graduates of its three-year course of studies. For local employees who cannot follow this program in residence, correspondence courses have been arranged. The instructional corps of the school is recruited partly from the faculty of the Institute of Urbanism and partly from the official staffs of national and local governmental services in and around Paris.

One further comment is in order regarding the operating efficiency of French local administration. The fact that, under French administrative law, the municipality itself may be held liable for damages

arising from the negligence or malfeasance of its employees induces particular care in their selection and surveillance. An action for redress may always be instituted by any injured party before an administrative court—either the Inter-departmental Council of Prefecture or the Council of State, depending upon the nature of the case. Where it can be proved that the employee was personally at fault, he is liable for the damages; but if he cannot satisfy the judgment, the communal treasury becomes liable. Where the nature of the injury (e.g., an accident resulting from the operation of any municipal function, “governmental” or “proprietary”), is such that it cannot be attributed to an individual employee personally, the service concerned must assume full responsibility. This is, indeed, a far cry from the *limited* liability of American municipalities for the commission of torts by their agents. The net effect has been to keep French municipal officials on the alert for the elimination of lax operating conditions and employee carelessness.

#### *Sec. 8. Local Public Services*

*The expansion of governmental expenditure.* In spite of the multiple controls exercised, both legislatively and administratively, over governmental functions at the local level, there remains a substantial field of action for free local initiative. To be sure, as already noted, it is mandatory upon *départements* and communes to maintain and finance certain governmental operations. For the most part the state has imposed these duties either because their proper performance by the localities is deemed essential to the *national* welfare, or because it is felt that local jurisdictions should share with the state the responsibility for financing certain field services administered by the national government. Over and beyond these minimum obligations, the communes (to a much less degree the *départements*) may operate various educational, social welfare, and public utility enterprises—in other words, engage in a considerable degree of “municipal socialism.”

While French cities have not yet gone as far in this regard as Scandinavian, German, or English municipalities, the period since the World War has been marked by a rapid expansion of public services in the larger urban centers. Much of the burden of economic and social reconstruction after the war was borne by local enterprise. The

increasing contact of French municipal officials with local government progress in other countries through various international organizations brought home a realization of how backward France had been in providing twentieth century amenities of life to its urban population. A further stimulus to local government activity has come from the large-scale programs of public works which the central government inaugurated in 1931 as a means of combating economic depression. In order to participate in the benefits of these programs, hundreds of cities have been induced to supplement state grants by local funds secured largely by borrowing operations.

A quantitative measure of the expansion of local public services may be had by comparing local expenditures at three periods—before the war, at the end of the prosperous 1920's, and during the recent depression.<sup>36</sup>

<i>Year</i>	<i>Départements</i>	<i>Communes</i>	<i>Total</i>
	(Total expenditures in millions of francs)		
1913	614	1,039	1,653
1929	4,821	14,000	18,821
1934	6,000	17,000	23,000

For the year 1937 local expenditures are estimated to have increased by 4 billion francs to a total of 27 billion, or considerably over half the current "operating" budget of the central government.

Allowing for the 80 per cent devaluation of the franc which took place in 1928, we find that current local government expenditures in terms of the 1913 index are nearly 3.4 times greater than before the war. While it is impossible to show the functional distribution of this increase item by item, by far the largest expansion has been for highways, streets, and other public works, education, welfare services, and relief—all activities over which the local authorities enjoy substantial powers of initiative. A not inconsiderable part of the increase is accounted for by recurring deficits in the operation of public utility enterprises which have had to be met out of general budgetary appropriations. On the other hand, comparatively little of the aggregate expansion of local government costs may be charged to general administrative overhead, or police operations in the narrow sense.

<sup>36</sup> Source: *Rapport de la Commission des Finances du Sénat*, No. 849, 2nd extraordinary session of 1936, annex to *procès-verbal* for 10 Nov., 1936.



The relatively greater rate of expansion in the economic and social domain may be seen by comparing the distribution of expenditure as between *départements* and communes, before the World War and during recent years. The shift in distribution is as follows:

Year	Per Cent Distribution of Total Expenditures by Local Units	
	<i>Départements</i>	<i>Communes</i>
1913 .....	37	63
1929 .....	26	74
1934 .....	27	73

Since the field of optional expenditure is much more limited for the *départements* than for the communes, it is at the municipal level where one would expect to find the greater expansion in administrative costs. Stating this in another way, the *nominal* total of *departmental* expenditure was only ten times greater in 1934 than before the war, while *municipal* expenditure had increased seventeen times. It should be noted, however, that this comparison does not give an entirely accurate picture of the relative burden of governmental costs at the two levels. This is because of various subventions made by *départements* to communes, and vice versa, some of them mandatory and others optional. Nevertheless, the aggregate amount of such grants is so small that the foregoing figures are not much out of line.

*The scope and organization of local functions.* So long as any proposed service is affected with a public interest and is not expressly forbidden by national law, the municipal council has complete liberty to decide (a) whether the service shall be established and (b) how it shall be organized. Throughout most of the nineteenth century French administrative jurisprudence took the position that local government authorities could not set up services "in competition with private economic enterprise." This restrictive viewpoint, a heritage of the *laissez-faire* approach to state activity, was gradually abandoned by the Council of State as the century drew to a close. Cities were allowed to establish their own water, gas, and garbage disposal plants. In 1913 Parliament itself extended the domain of local "police power" to tramway lines, public bathing establishments, employment offices, and concessions for the development of hydro-electric power. After the World War, cities were accorded the further right to distribute mu-



municipal food supplies either by agreement with coöperative organizations or by the direct ownership and operation of public markets, abattoirs, and bakeries, provided it could be shown that private enterprise was exploiting the consumer or otherwise not meeting the needs of the local community. This evolution reached a consummation in 1926 with the enactment of two important reforms removing all legal limits to the scope of "municipal trading," provided it has a "public purpose" and is approved by the appropriate central administrative authority—prefect, Minister of Finance or Interior, or Council of State.<sup>37</sup> Although for several years thereafter the Council of State still displayed a disposition to interpret "public purpose" somewhat narrowly, it is now yielding before a social imperative and permitting the establishment of a wide variety of local utility services.

Inherent in the principle of unitary state "sovereignty," however, is one restriction upon local initiative that remains inviolable. This is the rule that no local authority may encroach upon the domain of any function which Parliament has monopolized in the hands of the central government. Thus, in the field of education, no commune may subsidize any *private* elementary school, parochial or otherwise, although local funds may be used to supplement national funds.

So far as the structural details of administrative organization are concerned, the municipal code is silent. In principle, the council is free to authorize any scheme of administrative management it wishes. In the absence of specific instructions from the council, the mayor himself may determine the set-up of all new agencies and institutions, alter or consolidate existing agencies, or transfer functions from one service to another. Contrary to the practice of most American municipal councils, their French analogues never attempt to dictate the *internal* organization of specific services. This task is considered properly to belong to the executive authorities on the ground that they are in a better position to determine what scheme of organization is most suitable for each service.

Here again, however, the national government has stipulated minimum conditions to which the local authorities must adhere in organizing such basic functions as police and fire protection. Similarly, the

<sup>37</sup> Decrees of 5 Nov., and 28 Dec., 1926, issued by the Poincaré Government under emergency powers delegated by Parliament.

organization of sanitary inspection must conform to standard rules laid down by the national health authorities. Aside from these requirements, the allocation and organization of municipal functions is a matter for local determination. Typically, in cities of intermediate size, there are from five to twelve separate departments (*directions*), depending in part upon the number of *adjoints*. Seldom are activities consistently distributed according to any single principle, such as similarity of purpose or of operational technique. Nor does one always find a clear-cut distinction between "staff" and "line" functions in the organizational pattern. In general, so far as "line" operations are concerned, like services tend to be grouped together. On the other hand, there is rarely any special recognition of the budgetary process in terms of an extra-departmental budgetary agency. Along with other matters, the coördination of budgetary estimates is handled either by the office of the municipal secretary or in a division of the department of finance. Ordinarily, fiscal procedures, including tax assessment and collection, custody of funds, borrowing procedures, and accounting, are grouped together in a separate department, although it is not uncommon for the tasks of tax assessment and collection to be handled by different agencies.

The over-all administrative organization of the commune of Lille (population 201,000) may be regarded as more or less typical for a large industrial city:

*Central Secretariat—headed by the Municipal Secretary*

(council agenda, litigation, personnel, centralized purchase of supplies, supervision of police)

*First Direction: General Administration*

- 1st Bureau (drafting of ordinances, preparation of the municipal bulletin, etc.)
- 2nd Bureau (handling of official correspondence)
- 3rd Bureau (all legal matters pertaining to the acquisition, leasing, and sale of property for municipal use)
- 4th Bureau (military affairs)
- 5th Bureau (preparation of tax rolls, insurance of municipal property, registration of voters, and administration of elections)
- 6th Bureau (vital statistics)

*Second Direction: Public Works*

- 1st Bureau (administrative and legal matters relative to contracts and the granting of utility concessions)
- 2nd Bureau (verification of the accounts of contractors)
- 3rd Bureau (construction and up-keep of streets, bridges and sewers)
- 4th Bureau (construction, maintenance, and care of public buildings)
- 5th Bureau (architectural plans and designs)
- 6th Bureau (garbage disposal plant)
- 7th Bureau (municipal water works)
- 8th Bureau (city planning and zoning)

*Third Direction: Finance and Control*

- 1st Bureau (preparation of the budget, accounting, and audit of expenditures)
- 2nd Bureau (preparation of bills for "priced" services, collection of licenses and fees)
- 3rd Bureau (administration of municipal warehouses)

*Fourth Direction: Education and the Arts*

- 1st Bureau (elementary and secondary schools, scholarships, libraries, archives, schools for the deaf, dumb, and blind, vocational and physical education facilities, municipal theaters, museums, and conservatories)
- 2nd Bureau (school canteens)

*Fifth Direction: Health and Social Welfare*

- 1st Bureau (sanitary inspection, vaccination, control of epidemics, street cleaning)
- 2nd Bureau (licensing of physicians and pharmacists; inspection of food, milk, markets, and abattoirs; venereal prophylaxis; morgue; medical inspection in the schools; municipal obligations *in re* social insurance laws)
- 3rd Bureau (assistance to old people, the infirm and incurable, mothers at childbirth, and large families; free medical service; unemployment relief; labor placement offices)

For the handling of specific functions within a given bureau, there is an hierarchical division into an appropriate number of sections or services. Under the supervision of the latter are included a variety of economic enterprises, cultural and social welfare institutions. In this connection, it may be pointed out that French cities use the community revenues for the encouragement of education and the fine arts

over a much broader front than is the case with the typical American municipality. For example, there are few communities of 50,000 or over that cannot boast of a municipally operated or subsidized theater or opera house. Similarly, in the larger cities it is common to find the municipality supporting such cultural instrumentalities as a conservatory of music, a school of fine arts or architecture, a botanical or zoölogical garden, and invariably one or more free libraries. Despite the fact that general public education, from elementary school to university, is in France essentially a national function, many cities have in recent years established nursery schools, kindergartens, and various special institutions for vocational and technical training. These are financed entirely out of local revenues. There are also a considerable number of municipally supported secondary schools (*collèges communaux*) which supplement the regular State-supported *lycées* at that level. Some cities provide public scholarships for meritorious and needy students desirous of continuing their education beyond the secondary school. Others furnish free text books to elementary school pupils.

In the welfare and relief field, the rôle of the local authorities, municipal as well as departmental, now consists largely of action designed to supplement or implement the minimum requirements of national legislation. This is particularly the case with non-institutionalized assistance to unemployables, old people, and large needy families. The maintenance of institutional care of orphans, delinquent young people, the insane, and feeble-minded has long been a mandatory obligation upon local units, but the state contributes a substantial share of the costs of administration. The support of schools for the deaf, dumb, blind, and subnormal children is likewise a joint responsibility of the national government and local authorities. The administration of the national social insurance system (covering sickness, disability, accidents, and old age), while localized, is carried on under the closest supervision of the field staffs of the Ministries of Labor and Public Health. Since 1920, the latter ministry has encouraged municipalities to set up maternity, child welfare, and venereal clinics. The advent of the Popular Front to national power in 1936 saw the extension of this policy of national grants in aid to the recreational field, with the result that the playground and athletic facilities in urban communes are now undergoing a more rapid expansion than at any previous time.

*The management of local public utilities.*<sup>38</sup> The disposition of the public utility problem by French local government authorities calls for special comment. Nowhere has there been more interesting experimentation with different types of local utility operation and regulation than in France. Local experience and national legislation have combined to produce a number of ingenious forms of utility management which are highly suggestive for other countries.

In the field of French local utility enterprise three main systems are used: (a) public ownership and operation; (b) private management under public regulation by means of the "concession" or franchise; and (c) a mixed type of management in which both public and private capital participates.

Under (a), three different forms of administrative organization have been developed. The first consists of administration by a government department functioning directly under the authority of mayor and council, and assimilated with the other city services so far as budgetary and personnel policies are concerned. This arrangement is employed primarily for those rather small-scale services which do not involve complex techniques of rate determination or extensive capitalization. Common examples of this form of management are municipal markets, public libraries, parks, playgrounds, stadia, municipal baths, and cemeteries. As will be observed, these services are not primarily commercial in character since the income secured from fees or charges is not ordinarily intended to defray all the costs of operation. On the contrary, this revenue usually amounts only to a minor (though substantial) part of the aggregate outlays for operation and amortization of loans. The assumption is that the community as a whole should bear the major portion of these costs out of general tax receipts.

The second type of publicly operated utility is the *établissement public communal*. This is used chiefly for hospitals, asylums, sanitariums, homes for the aged and indigent, and small loans institutions for which a considerable degree of fiscal and managerial autonomy appears to be desirable. In principle, the power to create these quasi-autonomous

<sup>38</sup> The term "public utility" is here employed in a broader sense than is customary in America. Under French public law any social or economic service of general interest, whether it charges fees or rates to its users or not, is a public utility.

establishments rests with the administrative authorities of the state. A permissive decree of the central government is necessary before any municipality (or *département*) may inaugurate such an establishment, or even change the status of an existing service from the departmental to the autonomous type. When such action is taken, a special board or commission, consisting of the mayor, two members chosen by the council and four by the prefect, must be created to supervise the establishment. The latter thereupon acquires a corporate personality of its own, operates under an independent budget, may accept gifts or legacies and borrow funds directly from the public (with the commission's consent), may set up a reserve fund, and exercise considerable freedom in determining its personnel policies. Although these autonomous establishments are sometimes allowed to call upon the municipality to cover their operating deficits, the notion underlying their independent status is that they should be self-supporting, either entirely from charges for service, plus the income from such endowment funds as there may be, or with the aid of fixed subsidies granted by the state. The great majority of public charities all over France are financed by thus combining private philanthropy with public appropriations.

Probably the most unique example of this form of municipal socialism in France is the *caisse de crédit municipal*. Many years ago the ancient and venerable profession of pawnbroking was converted into a public institution. More recently the operations of this form of municipal establishment have been extended to certain types of small loans and the acceptance of small savings accounts. Every French city of substantial size now maintains such an institution.

For such major industrial or commercial services as tramway, bus, water, gas, and electricity systems, or agencies to protect the consuming public from private speculation in foodstuffs, the form of *public* operation now most in favor is the *régie municipale*. This differs from an ordinary government department in two respects: (1) it is managed by a permanent director, the latter being advised by a part-time board (*conseil d'administration*) appointed in part by the prefect and in part by the mayor; and (2) it enjoys a limited fiscal and administrative autonomy. On the other hand, it does not necessarily acquire an independent corporate personality (except in the case of transport and power agencies); nor is it removed from the general control of

the municipal council. In short, the *régie municipale* occupies an intermediate status between a regular government department and an autonomous establishment.

There are two reasons for this intermediate set-up: (1) special procedures for the recruitment of administrative and technical personnel may be utilized, allowing for greater flexibility than would be possible within the regular municipal civil service system, and (2) the budgetary autonomy of the *régie* is conducive to the application of business methods and experimentation with new operating techniques. The budget of the enterprise is drawn up by the director in consultation with the administrative board. The opinion of the latter body must also be sought in connection with all proposed service rate schedules and additions to plant capacity. The budget is divided into two sections, one showing estimated operating expenses and current revenues; the other, capital outlays and whatever borrowing may be necessary to finance such outlays. As the general controlling authority, the municipal council votes the annual budget, which usually appears as an "annex" to the general communal budget, authorizes changes in rate schedules, and must approve all proposals for new construction or the installation of new equipment. If the *régie* incurs an operating deficit, provision must be made for meeting it out of the general budget of the commune.

The administrative management of all *régies municipales* is annually checked up on by the field inspectorate of the Ministry of the Interior. In order to insure proper fiscal accountability, a special controller is appointed by the Ministry of Finance for each *régie* whose annual receipts exceed 500,000 francs. In addition, its accounts are examined by the General Inspectorate of this Ministry and post-audited by the Court of Accounts. During the last decade many municipalities, particularly those controlled by socialist groups, have kept utility rates so low as to produce operating deficits year after year, with recourse to borrowing in order to cover the deficits. With a view to discouraging such a policy, the national government was recently forced to lay down the rule that whenever the operating budget of a municipal utility is not balanced, the Ministers of Finance and Interior may order rate increases on their own initiative.<sup>39</sup>

<sup>39</sup> Decree of 30 July 1937.



In France the provision of local utility services is not confined to the foregoing types of *public* ownership and operation. A scheme of control resorted to with equal if not greater frequency for large-scale enterprises is the *service concédé*. Under this scheme the municipality (or *département*) grants to a private company a concession or franchise for a fixed period of years. The terms of such concessions must conform to certain minimum or maximum conditions affecting adequacy of service, the range of rates that may be charged, bond issues, fiscal equilibrium of the enterprise, its liquidation in case of failure to meet obligations, and in some instances its subsequent acquisition by the controlling governmental jurisdiction. In metropolitan areas there are numerous examples of private utilities operating under public franchise. Among such enterprises probably the most extensive were the two Paris subway systems up to the time they were consolidated in 1929. Many cities employ the concession type of regulation for gas and electricity service and to a somewhat less extent for water systems.

Since the World War a special form of *service concédé* has appeared. This is the so-called "mixed enterprise" in which public and private ownership and management are joined. Under the disturbed economic conditions of the post-war period, not only have utility concerns frequently been unable to attract sufficient private capital for their needs, but under the old type of franchise it was discovered that the public authorities often had too little control over the profits made by the more powerful utility companies. In short, the municipality was exposed to the risks of improvident private management and financing without having any continuous control over management operations or being able to share in excess profits when such appeared.

In order to remedy this situation, the state began, as early as 1918, to authorize various degrees of governmental participation in the ownership and administrative direction of private utility enterprises. At the outset, participation at the municipal level was limited to regional undertakings for the production of hydro-electric power and navigation on the Rhone River.<sup>40</sup> By the 1926 decrees previously cited, the principle of the "mixed enterprise" was extended to all municipal

<sup>40</sup> By the laws of 16 Oct., 1919 and 27 May 1921.



utilities of an industrial or commercial character, in addition to regional or national enterprises in which the commune claims an interest.

With the prefect's approval, any municipality may purchase up to forty per cent of the capital of a private utility. If the commune buys bonds only, it is entitled merely to appoint a special delegate to sit with the board of directors and advise the management on all matters in which the municipality has an interest. If the latter acquires stock ownership, it may take a more active part in the direction of the enterprise. In proportion to the size of the city's stock holdings, it enjoys voting power in stockholders' meetings and may place one or more representatives on the board of directors, as well as in the management itself. All such representatives are chosen by secret vote of the municipal council for a term coincident with that of the council. They may be removed in similar manner, but only with the prefect's approval.

Under certain conditions, the earnings of mixed enterprises may be limited to a fixed percentage by the terms of the concession. When this is the case, the municipality shares up to the amount of its holdings either in direct financial return or increased service. If the municipal representatives disapprove of any vote taken by a majority of the board of directors, they may demand reconsideration of the issue, but they have no actual veto power.

The permissive legislation of 1926 is of so recent a date that the number of instances in which municipalities have adopted the mixed enterprise type of utility management remains comparatively small. There is general agreement, however, that the new formula represents an ingenious device for harmonizing the elasticity and independence of private business with a more adequate regard for the public interest. Its utilization promises to spread as new concessions are granted for economic services. In the larger metropolitan centers a number of interesting examples of jointly controlled utility undertakings may already be noted. The municipality of Paris, for instance, has utilized the principle in developing low-cost housing. The city subscribed a substantial portion of the necessary capital to a public housing corporation which agreed to provide the remainder. An agreement between the municipality and this corporation fixed the conditions under which

various housing projects were to be constructed and rented on land made available by demolishing the ancient fortifications surrounding the city. Municipal participation in net utility profits was made a condition of a forty-year concession granted by the city of Paris in 1928 to a private company for the central distribution of steam and hot water for heating purposes. In 1929 a similar arrangement marked the consolidation of the Metro and Nord-Sud underground systems under a new franchise which provided for the extension of subway lines into suburban territory, both the city and the *Département* [of the Seine] reserving forty per cent of all net profits in return for having furnished the entire initial capital required to construct the new lines.

At this juncture, it is appropriate to recall that two or more local authorities may combine to establish public utility services whether on a public ownership basis or by franchise. Frequently neither a single commune, nor for that matter a single *département*, constitutes a large enough area to operate efficiently a local utility; or the nature of the undertaking may require unified management over the territory of several local government authorities. So it is with the provision of public transport facilities for suburban communities within metropolitan regions, as well as for interurban service in rural areas. A similar situation has arisen in connection with rural electrification undertakings.

Legislation initially enacted as far back as 1890 and strengthened in 1926 permits two or more communes to operate joint utility services. Such services may take two forms. One arrangement is for the central or most important commune to act as concessionnaire by a contractual agreement made between it and other communes desiring to purchase the service. The other plan entails the establishment of an autonomous inter-communal syndicate. This is administered by a committee elected by the participating municipal councils. Since 1930 adjacent *départements* have been empowered to set up consolidated services under comparable conditions. There is already a considerable number of these inter-departmental undertakings for the development of regional transportation systems, water supply, and electric power. In the poorer and more sparsely settled parts of the country, many normal schools, hospitals, and asylums are jointly financed and ad-

ministered by two or three *départements*, none of which could adequately maintain such institutions from its own resources alone. It is even possible for *non-adjacent départements* to practise this sort of "functional regionalism."

*Local courts.* In France the administration of justice is completely centralized under the control of a national Ministry of Justice. In other words, local authorities have nothing to do with the appointment, remuneration or removal of judges, even at the lowest level of the judicial hierarchy, nor with the organization of the courts. Exercising summary jurisdiction over violations of police regulations and other minor offenses, a justice of the peace formerly held "ordinary police court" in each canton. In recent years some of these petty courts have been consolidated on an inter-cantonal basis, but they still number nearly 3,000 in all. The justice of peace may also adjudicate civil disputes where the amount involved does not exceed 3,000 francs, with a right of appeal if the amount is more than 1,000 francs. Only about one per cent of such cases are, however, ever appealed. The principal function of this humble magistrate is to bring contending parties into informal agreement "out of court." In rural areas over forty per cent of all civil controversies are "conciliated" in this fashion. Until 1918 no professional qualifications were required of justices of the peace. Today, however, appointments are restricted to men who have law degrees and two years' legal experience, and pass a professional examination set by the national Ministry of Justice. All justices of the peace enjoy security of judicial tenure and the best of them may expect promotion to the bench of a district court (*tribunal d'arrondissement*).

In addition to these courts of summary jurisdiction, special tribunals of "experts" have been set up in the larger cities. The latter are of two types. The first is the *tribunal de commerce*, made up of a panel of unpaid judges chosen by business groups, which has limited jurisdiction over commercial disputes. The other is the court of industrial relations (*conseil de prud'hommes*), consisting of employer and employee representatives empowered to arbitrate labor disputes, provided the parties consent, but always with the right of appeal to a regular court of first instance. Both of these special local tribunals date from

Napoleonic times, but their usefulness in the complex business society of today is subject to question and apparently declining.<sup>41</sup>

Next in scale comes the trial court of first instance. Until 1926 there was one of these tribunals in each *arrondissement*. In that year, for reasons of administrative economy, Premier Poincaré abolished over 100 of them, chiefly in the less populous areas. Unfortunately, local pressure upon Parliament resulted in the reestablishment of many of these trial courts despite the fact that the volume of judicial business by no means justified such action.

Presided over by three professional judges selected by competitive examination, the court of first instance has unlimited civil jurisdiction. It also acts in an appellate capacity in cases involving 1,000 to 3,000 francs which are sent up from justices of the peace. Its criminal jurisdiction extends to misdemeanors, including theft and embezzlement but excluding such serious crimes as homicide and arson. In hearing criminal cases the court sits as a "correctional" tribunal, the three judges deciding the issue by majority vote without a jury.

Although civil appeals are limited to cases involving more than 1,500 francs, all "correctional" judgments may be appealed. Civil appeals go to a regional court of appeal, one of which sits in each of the twenty-four larger provincial centers, as well as in Paris. On all questions of fact this court renders final judgment, but on questions of law an appeal may be carried to the supreme Court of Cassation. Criminal appeals, confined in practice to the more serious offenses, go to a special Court of Assize. A session of this court is held every quarter at the seat of each *département*. Here alone, in the French judicial system, is the institution of the jury used.

French criminal procedure has certain characteristics foreign to Anglo-American practice. Instead of indictment by a grand jury or "information," the preliminary investigation of an accused person is conducted by an examining magistrate (*juge d'instruction*), the public prosecutor (also an appointive official) presenting whatever evidence he has to this judge. If the latter decides that a *prima facie* case has been made out against the accused, a searching inquisition is held privately. The entire record then goes to the court of first instance or

<sup>41</sup> For a brief account of how they work, see W. E. Rappard, *et al.*, *Source Book on European Governments* (New York, 1937), II, 116 ff.

the indictment section of the Court of Appeal, depending upon the gravity of the offense. A formal trial follows in due course.

Under such a centralized system, judicial administration is relatively expeditious and free of petty technicalities. Thanks to the large discretionary powers of the professionally trained judges, there are not nearly so many long-drawn-out appeals or mistrials as in the typical American state. Nor is there any such abuse of bail as prevails across the Atlantic. Since all judges and prosecuting attorneys are appointed and controlled by a unified Ministry of Justice, the courts are never the "football" of local politics, as in certain boss-ridden American cities. On the other hand, one finds in France comparatively little recognition as yet of the need of specialized judicial agencies to handle such matters as juvenile delinquency, domestic relations, or small claims.

#### *Sec. 9. "Greater Paris" and Metropolitan Planning*

*The government of Paris and the Seine.* The metropolis of Paris is not only the political capital of France, but it dominates the economic and cultural life of the nation as well. In France "all roads lead to the City of Light" in more ways than one. It is the ambition of every provincial Frenchman to visit his magnificent capital city at least once before he dies. More than a half million do so every year, along with an almost equal number of foreign tourists. No other city in Europe contains so large a colony of permanent expatriates. Paris is certainly not France, but as an English journalist has aptly observed, "it is the vortex of France, a vortex that has drawn to itself the best elements of the country (and other elements besides) through long generations."<sup>42</sup>

For all these reasons, plus the further important fact that the populace of Paris has provided the impetus for every serious revolutionary disturbance in modern French history, the national state has always insisted upon keeping the politics and administration of the capital under its strict surveillance. The provisions of the general municipal code do not govern Paris, while the law of 1871 only partially applies to the Department of the Seine, over and even beyond which "Greater Paris" now extends. Like most great national capitals,

<sup>42</sup> H. G. Daniels, *The Framework of France* (New York, 1937), p. 27.

Paris enjoys less "home rule" than the other cities of the country, although its inhabitants certainly have more control over their local affairs than Washingtonians have over theirs.

Instead of one prefect, the Department of the Seine has two—the Prefect of the Seine and the Prefect of Police. Appointed by and responsible to the Ministry of the Interior, these two officials together constitute a dual executive for the governmental organization of the metropolitan area. The Prefect of the Seine serves in a triple capacity: he is the head of the departmental government, "mayor" of Paris, and an executive agent for the national authorities. He exercises supervision over all the local administrative services of the city and the Department of the Seine, including elections, tax collection, streets and highways, markets, elementary schools, public works, health, welfare and relief. He is also responsible for preparing the municipal budget and carrying out all decisions of the elective municipal council save police measures.

There is a unified police establishment for the city and the Department of the Seine. At the head of this metropolitan police force stands the Prefect of Police who, as agent of the Interior Ministry, is easily the most powerful single police officer in France. Under his command are some 16,000 uniformed patrolmen, traffic officers, plain-clothes detectives, and inspectors. Forming an important section of the Prefecture of Police, the headquarters of the entire police set-up, is a bureau of criminal identification which serves as a central clearing house for finger-print records for the entire country. In passing, it is interesting to note that the use of finger printing in police administration was first inaugurated by a famous Paris criminologist (Bertillon). For technical efficiency and speed in combating organized crime, few metropolitan police establishments in the world can equal that of the French capital. On the other hand, its record in coping with riots and mass demonstrations is less commendable.

The budget for the metropolitan police establishment is prepared by the Prefect of Police. While it must be submitted to the municipal council for formal vote, the latter body may not reduce a single item, its power in this connection being limited to "votes of censure." Up to fifty per cent of the cost of police administration is met by the national treasury. In addition, the controlling arm of the central



government determines the internal organization, standards of recruitment, rates of pay, and disciplinary rules of the metropolitan police force. The legal powers of the Prefect of Police comprehend all measures necessary for the maintenance of public order, safety, sanitation, and morals. More concretely stated, the orbit of his authority covers the suppression of crime; the policing of streets and highways, public meetings, theaters, cemeteries, public monuments, and the stock exchange; the inspection of buildings, weights and measures, markets, food and water supplies; the regulation of vice, dancing, and gambling halls; and the registration of aliens.

The metropolitan fire department is controlled by the Minister of War in respect to organization, recruiting, pay scales, and discipline. The firemen may be called out by the minister to help quench serious street riots. Their expenses, however, are defrayed by the city of Paris and they are under the orders of the Prefect of Police for the function of fire protection proper.

In addition to the administrative services of the two prefectures, there are within the city of Paris twenty district *mairies*. The city itself is divided into twenty *arrondissements*, each of which has a local headquarters and a mayor. Appointed by the national government and subordinate to the Prefect of the Seine, the mayor of each has charge of various minor operations of government which have been "decentralized" by neighborhood districts for the convenience of the citizens. The most important of these operations are the registration of births, deaths, and marriages (the mayor performing all civil marriages); the taking of the census; the registration of voters, school children, and conscripts for military service; and the administration of poor relief, old age pensions, assistance to neglected children, and employment offices. Attached to the bureaus of each *mairie* there are also a number of part-time lay boards which assist the mayor on relief, public health, and educational matters.

Despite the fact that the entire administrative branch of the government of Paris is directed by centrally appointed officials, the citizens of the metropolis do have some share in determining its administrative policies and tax rates. For Paris proper this limited popular control is exercised through an elective council of ninety members. Each of the twenty *arrondissements* chooses from four to seven coun-



cillors for a term of six years, the entire membership of the council being renewed simultaneously. The council meets four times a year in regular session and in emergencies may be called into special session by the Prefect of the Seine. It chooses its own presiding officer and maintains a battery of standing committees. Its methods of work do not materially differ from those of local government councils in the provinces. But the Paris municipal assembly possesses considerably less policy-making initiative and is more closely limited in its budgetary powers. Because the state is deeply concerned with the financial health of the capital city, its annual budget becomes effective only after a decree of approval countersigned by the Ministers of Finance and the Interior. In recent years the aggregate expenditures of the metropolis have approached 5,000,000,000 francs (around \$200,000,000), equal to more than a quarter of the entire outlay for municipal government throughout France. Welfare and relief hold first place among the objects of expenditure, with police administration a fairly close second.

In addition to the city of Paris, the Department of the Seine includes the two suburban *arrondissements* of Saint Denis and Sceaux. Added to the 3,000,000 inhabitants of the central city, there are 2,000,000 who now live in the 80 suburban communes embraced by these two *arrondissements*. Paris so dominates the affairs of the Department of the Seine, however, that the latter area is endowed with fewer independent organs of government than is the case with the provincial *départements*. Its general council consists of the ninety members of the Paris municipal council plus fifty additional councillors elected by cantons from the suburban area. With few exceptions, the functions of this council are identical with those of other departmental assemblies. Upon convocation by the Prefect of the Seine (usually twice a year), it meets in the *Hôtel de Ville*, where the city council also holds its sessions. The overhead administrative operations of the departmental government are directed by the same prefect and staff that supervise the municipal business of Paris. The Department of the Seine operates certain special services whose jurisdiction extends to the suburban territory, to wit, road and bridge maintenance, prisons, barracks, normal schools, asylums, and charitable institutions. These functions involve an annual expenditure of over 3,000,000,000 francs. In addition, the departmental council and Prefect of the Seine jointly

exercise fiscal and administrative control over the suburban communes. For police protection, however, the latter areas rely entirely upon the metropolitan police establishment under the Prefect of Police. No sub-prefectures exist in the Department of the Seine; nor is there any departmental standing committee.

*Metropolitan regionalism.* As late as a generation ago, this partial amalgamation of city and suburban government worked fairly well. But the importance of Paris as an industrial metropolis has increased so rapidly since the World War that its teeming millions now spill out beyond the confines of the Department of the Seine. Located in two adjacent *départements*, scores of industrial satellite communities have sprung up within a radius of twenty or thirty miles from the central city. On account of this vast regional development, increasing attention has had to be given to the unification of such essential public services as rapid transit, arterial boulevards, and water supply, and the provision of housing and recreational facilities for an agglomeration of some 6,000,000 people. It is all the more natural that the problem of unified planning on a metropolitan scale should have attracted national interest, seeing that the shift of population cityward has produced difficulties of comparable magnitude in other rapidly growing provincial centers like Marseilles, Lyons, Bordeaux, and Lille.

As a matter of fact, city zoning and planning in the narrower sense had begun to concern several of these municipalities a generation ago. Under a provision of the municipal code (article 68), it was possible to impose local regulations governing the character of new construction, to relocate and widen streets, and to provide open-air spaces, in so far as the financial costs thereof were not prohibitive. For the suburban areas around Marseilles and Lyons, police service was provided on a unified metropolitan basis, and in several places it was the practice for suburban communes to contract with the central city for fire protection. To a limited extent, moreover, suburban commutation facilities were being brought under a unified management by means of inter-communal agreements.

It was not until after the War, however, that the development of metropolitan planning on a regional scale attracted the serious attention of the national authorities. This sort of planning received its first important impetus from two laws adopted by Parliament in 1919 and

1924. Under the provisions of this legislation, the establishment of a "master" plan for urban expansion and beautification was made obligatory for all communes of over 10,000 population, as well as for all other towns whose population was "rapidly growing," or where there were notable scenic or historic sites to be protected, and for all seaside and inland health resorts. To coördinate and control local projects, the law ordered a central planning commission to be set up by each *département*. Once a local plan received the approval of this commission, no future construction by property owners could be undertaken except in conformance with the provisions of the plan.

The effects of this legislation were not long in manifesting themselves. With few exceptions, the larger cities added to their administrative apparatus a technical *service de l'urbanisme*, located usually within the department of public works. By the later 1920's various associations for the scientific study of urbanism had been formed and at the University of Paris an Institute of Urbanism was established. As public interest in the problem spread, it became clear that the chief obstacle to a unified program of development for the larger metropolitan regions was the multiplicity and overlapping of local governmental jurisdictions. At the same time, the pressure of local vested interests prevented any such drastic solution as outright unit consolidation or the large-scale annexation of suburban territory by the central metropolis. The result was a flank attack on the problem. In 1929 a commission was set up within the Ministry of the Interior to make a detailed study of the demographic, economic, and social characteristics of the "Greater Paris" region. From this study emerged the proposal that the sociological unity of this regional area should be recognized by law and its future development should conform to a "master" plan.

The passage of such a law early in 1932 was an event of capital importance to the progress of metropolitan planning in France. Under the leadership of an eminent urban architect, the foregoing commission at once set to work to evolve a plan for the Paris region. Within two years the plan was ready. As envisaged by the law of 1932, this plan is to control the entire future development of an area extending from the outer limits of the city of Paris along a radius of thirty-five kilometers (twenty miles). Including Paris, this region embraces 657

communes, all or parts of three different *départements*, and a total population of over 6,000,000, equal to a seventh of the entire population of the country.

With a view to expediting access to and exit from the city, the master plan projects a network of radial boulevards and highways. It also contemplates the demolition of slum areas, the zoning of buildings, the provision of open-air areas for recreational purposes, and the expansion of rapid transit facilities (by motorbus and electric train), and other essential public services. In order to discourage real estate speculation within the region, a second law was adopted which subjects the future buying and selling of land to conditions set by the public authorities. In addition, the procedure of condemning real estate for public use was simplified for the purpose of expediting the initiation of public works projects.

With the recent launching of large-scale public works programs on a *national* scale, as a means of relieving unemployment, the development of metropolitan regionalism has been still further stimulated. In 1936 the Blum Popular Front Government established a new commission to coördinate specific projects subsidized by national funds with the requirements of urban planning. The following year this commission was instructed to draw up rules for the guidance of local authorities throughout the country and to give opinions on all technical questions that may be submitted to it. To aid the commission in its technical task, a permanent *Service de Coördination des Grand Travaux et de l'Urbanisme* has been attached to the office of the Prime Minister.

"Greater Paris" in the making. The progress of urbanism during recent years may be concretely illustrated by what has already happened in the "Greater Paris" area. Surrounded as Paris was by an ancient girdle of fortifications, the first step that had to be taken was to demolish these fortifications. Inaugurated in 1924, the work of demolition, requiring the removal of 400,000 cubic meters of masonry and 4,000,000 cubic meters of earth, has now been completed. As a result of an agreement with the War Ministry, a strip of land 200 yards wide came into the hands of the city by reason of the fact, curiously enough, that Louis Philippe had a century earlier ordered such a strip of territory outside the fortifications to be kept free for "military use"! Already the illegal "squatters" on 233 of the 454 hectares

in this "no man's land" have been dislodged and by 1945 it will be entirely cleared.

Some of the land acquired by this urban "disarmament" is being used for housing construction. Since 1934, over 50,000 modern apartments have been built by private capital, with the aid of local and national subsidy. Along miles of new and widened outer boulevards, colonies of workers' dwellings are under construction. Schools, fire stations, police barracks, hospitals, and other public buildings have risen within the new zone. For every acre built up, the authorities have decreed that there shall be a proportionate amount of space left for garden and playground use. Around the old city scores of modern athletic fields, stadia, and tennis courts have been provided for public enjoyment.

Another consequence of this vast dismantlement has been to multiply the points of ingress into the city. Previously, all traffic had to pass through fifty-nine "gates" in the old military wall, with what terrific congestion may readily be imagined. Now there is provision for nearly 200 roads connecting the central city with its growing suburbs. To take care of cross-traffic, a system of tunnels underneath eight of the main entrances has been built. One can now go round the city, from north to south, in less than half the time it used to take to motor straight through the center. As already mentioned, the metropolitan subway system has recently been extended far into suburban territory. For the old-fashioned tramways, destined ultimately to disappear, suburban bus lines are being substituted. Taken together, the buses and the "metro" system now transport over 2,000,000 Parisian workers to and from their jobs every workday, nearly half of them coming from the suburbs.

While the progress of clearing out slums and narrow tortuous streets inside the city must necessarily be slow because of the heavy costs of compensating property owners, Paris can fairly claim to be on its way to becoming once again "not only the city of light, but also the city of air" and sunshine. One of the most densely populated urban areas in the world, the metropolis has set as its goal the conversion of at least ten per cent of its total land surface into open spaces—parks, promenades, wide boulevards, playgrounds, and athletic fields. What with its tree-lined avenues and such magnificent public parks and

squares as the Tuileries, the Jardin du Luxembourg, the Bois de Boulogne, and the Bois de Vincennes, for which Paris has long been renowned, there is no reason why it should not in the near future be garbed in the most expansive dress of nature's green of any metropolis in the world—unless the catastrophe of war should shatter the work of reconstruction!

The physical reorganization of the Parisian suburbs is likewise making slow but steady headway. Under the progressive leadership of the Public Housing Office of the Department of the Seine, several "garden city" developments have already been completed to the west and south of the city (notably at Suresnes), while numerous additional projects are being planned. It is in the new and unsightly industrial suburbs to the east and north—the Communist "red belt"—that the march of urban modernization has tended to bog down. But the need of an extensive rehousing program for their thousands of industrial workers is at least realized.

With the Paris region leading the way, other French cities are now beginning to attack the problem of metropolitan planning. Any one who examines recent municipal reports from such places as Marseilles or Lyons will be struck by the experimental vitality of this regional urbanism in the provinces. Unfortunately, few of those picturesque but primitive villages that dot the French landscape have yet felt the impact of the movement for modernized sanitation and housing, although some progress in rural electrification is being made. If the continued depopulation of the countryside is to be checked, France cannot afford much longer to delay the development of a comprehensive program of rural rehabilitation. The initial stage of such a program was announced by the Daladier Government in the spring of 1938.

#### *Sec. 10. The Riddle of Local Finance*

*Financial confusion.* Until the World War, French local revenues, aside from income from communal property and commercial services, were obtained primarily from four types of taxes on real estate, rentals, "doors and windows," and occupations, by adding local "centimes" (hundredths of the franc) to tax quotas fixed each year by the central government. The maximum number of local centimes that could be



levied by local authorities was laid down annually in the national budget act. With the exception of the municipal *octroi*, an old internal quasi-customs tax dating from before the French Revolution, no independent local tax sources of any importance were available to local taxing bodies.

So far as local requirements were concerned, this system gave fair satisfaction until the period of the war. Then, by a series of reforms passed in 1914-17, three of the four antiquated and inequitable direct taxes mentioned above were abolished as sources of national revenue, personal and business income taxes replacing them, and only the real estate tax being retained in modified form. This action placed a new complexion on the local tax problem. It was not thought feasible to superimpose additional centimes upon income tax rates. Instead, however, of directly reconstituting the local tax base, it was decided provisionally to continue the local "additional centime" system by using as an artificial base the direct tax quotas formerly established for national purposes. This was admittedly a cumbersome and unsatisfactory arrangement.

The decade following the peace was marked by increasing confusion in local public finance. In 1918 the *octroi*, outmoded as a twentieth century revenue instrument, was greatly reduced as regards classes of goods that were taxable, as well as rates that might be charged. Eight years later the traditional "doors and windows" tax was completely abolished for local purposes. Local revenue further shrank because of a marked decline in the share of the real estate tax yield which accrued to local authorities. This decline was produced in part by the fall in farm values, still more by the appropriation of an increasing proportion of the proceeds by the heavily indebted central government. In order to finance growing expenditures for welfare, health, relief, rural electrification, schools, and highways, local authorities were not only forced to levy all the local traffic would bear, but were obliged more and more to borrow money. By 1929 the local public debt, in terms of the devalued franc, had grown to three times what it was before the war.

After 1931 the impact upon France of the world economic depression further aggravated the crisis in local (as well as national) finance. By 1934 local expenditures, augmented by relief and public works



outlays, reached a total which was 165 per cent higher (account being taken of currency devaluation) than twenty years before. Two groups of communes were hit hardest by this critical situation. On the one side were the small rural communities with an excess of old people and greatly reduced farm income. On the other side were the larger cities and industrial suburban communities, where unemployment was greatest. Many of the medium sized urban communes still managed to get along fairly well, some of them because of very lucrative revenues from public forests or mining concessions located within their territories. Nevertheless, had it not been for the fairly close control over local tax collections and loans exercised by the central authorities, municipal bankruptcies would doubtless have been frequent during recent years. (To Americans it will appear remarkable that as late as 1936 only one French city had actually defaulted on its obligations—a single-industry community in which the industry failed!)

Several years prior to the current financial crisis the demand for local tax reform began to be heard. This demand was focused primarily through two groups: the "mayors' bloc" in Parliament and the National Association of French Mayors outside. In a less direct fashion the French Union of Cities, founded in 1913, engaged in efforts to secure fiscal legislation favorable to the smaller municipalities. This organization has also provided technical aid and legal advice to those cities that cannot themselves afford to maintain such services. In conjunction with the Association of Mayors, which is dominated by the representatives of the larger cities, the Union of Cities has been a constructive element in the struggle for the reorganization of local public finance. Taxpayers' leagues have likewise played rôles of varying importance, sometimes of a constructive, more often of a destructive character.

*Shifting state-local fiscal relations.* To date the remedial steps taken with a view to relieving the crisis in local public finance may be grouped under six heads: (1) utilization of new state-collected and locally shared taxes; (2) establishment of certain independent sources of local revenue; (3) expansion of direct subsidies from the national treasury; (4) state loans of capital and reduced interest rates; (5) transfer of highway and certain other costs from local to central authorities; and (6) the imposition of stricter central control over local expenditure

and borrowing. A brief discussion of each of these reforms is necessary in order to understand the shifting financial picture.

(1) By laws enacted in 1920, 1925, and 1930, several new centrally collected and locally shared taxes were set up. The most important of these include taxes on alcoholic beverages, motor cars, business turnover, and official identification cards for foreigners. The apportionment of their yield between state and local authorities is determined by legislative formulae which take into account such factors as the consumption of wine and beer, highway mileage, population, and the number of alien residents respectively. More recently, in 1934-35, 10 per cent of the national gasoline tax yield was also allocated for local purposes and new locally shared taxes on hunting permits and filling stations were imposed. Designed in part to replace the old *octroi*, the portion of the proceeds of these new taxes accruing to the *départements* and communes now amounts to around 5 per cent of their annual expenditures. While a nationally unified system of collection for such taxes is probably necessary and admittedly an advantage, the criteria by which the proceeds are distributed are subject to widespread criticism. The chief complaint is that the principles according to which local allocation is made have no close relation to the varying revenue needs of local districts. Many cities, receiving larger sums than they can use, are tempted to be extravagant, while others find the amounts insufficient to replace lost or declining tax resources.

(2) As a further means of helping local authorities to put their financial houses in order, a law passed in 1926 set aside twenty-three different taxes, licenses, and fees for municipal use. This list included (a) taxes on the income of certain types of property, on employers of domestic servants, on business office rentals, on gas and electricity, on advertising, and on the users of automobiles, pianos, and billiard tables; and (b) the power to license athletic clubs, night clubs, race courses, and hunting. In certain cases, where the state is permitted to tap the same item, the local levy is limited to 25 per cent of the state tax. Producing an annual yield of only 150,000,000 francs for all those cities that have so far utilized them, these taxes have proved disappointing. At best they represent but a slight step in the direction of establishing any substantial *independent* and *separate* municipal revenue sources. To the city of Paris, which was already making use

of most of these taxes by special authorization, the 1926 legislation proved of no benefit at all.

(3) A wide variety of central subsidies to local public services have been resorted to. The use of direct grants in aid began in France as early as 1871, but did not reach formidable proportions until the 1920's. The factors leading to this practice were threefold: (a) the expansion of the activities of local governments in the social and economic domain; (b) the inadequacy of local tax yields, tied as they were to an artificial and inflexible tax base; and (c) the growing disparity in the capacity of municipalities (and to a less degree *départements*) to meet the burden of rising local expenditure, which gave rise to a demand from the poorer units for "equalization."

As in other countries, French grant-in-aid policy has evolved without systematic planning—partly by special statutory enactments, partly by provisions inserted almost as afterthoughts in annual budget laws, and sometimes merely by the issuance of executive orders. Moreover, it is a policy which remains constantly in a state of flux. During the years 1931-32, for example, no fewer than thirty different parliamentary acts relative to state aid for unemployment relief reached the statute book.

Except for a small subsidy granted annually to the ten "poorest" *départements* for general purposes, it has been the practice to assign central subventions to *specific* local services, as determined by national legislation. In large part these purposes consist of activities the maintenance of which the state has, in principle at least, made mandatory upon local authorities. In order of fiscal importance, such subsidized activities may be classified as follows: (1) unemployment relief and social welfare (aid to dependent children and child-bearing mothers, old age benefits, etc.); (2) public works projects (including school buildings, highways, tramways, autobus lines, water supply systems, low cost housing, urban beautification, and rural electrification); (3) promotion of agriculture (technical and educational facilities, insurance, etc.); (4) public health (hospitals, clinics, tuberculosis sanatoria, free medical service); (5) police and fire departments.

The distribution of state subsidies follows three distinct patterns. One type of grant takes the form of a fixed percentage of total expenditure for the service in question. Accordingly, public aid to de-

pendent and neglected children is financed by the central government (20 per cent), the *département* (40 per cent), and the municipality (40 per cent). This is a simple procedure which is claimed not to have encouraged wasteful expenditure, but which does little to mitigate inequality of local revenue capacity.

The tendency now is to employ more complex formulae of allocation. Thus a second group of grants are distributed by taking into account various indices of local capacity (population, total assessed property valuation, or per capita or per square kilometer), without regard to need.

Still a third method, more extensively employed than either of the other two, is based upon the direct ratio of the number of units to be aided (unemployed, large families, etc.) to the total population; or, if it is desired to stimulate local public works, upon the inverse ratio of the units already available to the size of the area, e.g., completed highway mileage per square kilometer. This type of grant is best illustrated by the graduated scale of state assistance to local unemployment relief funds (obligatory in the larger municipalities). Where the number of registered unemployed does not exceed ten per thousand inhabitants, the state's share is 60 per cent of the total outlay. As this ratio increases, the percentage increases to a maximum of 90 if and when the proportion of unemployed exceeds thirty per thousand. In occasional instances the allocation of state grants is left to the discretion of central administrative commissions set up specifically to pass upon local requests.

Once appropriated state grants are technically handled by the staff of the appropriate ministry (Labor, Public Works, Health, Agriculture, or Education). The plans for public works projects designed to relieve unemployment must be submitted for technical approval by the Ministries of Finance, Interior, and Labor. When they reach joint agreement on the matter, the local authority seeking a grant is so notified. Applications for other types of grants are legally subject to approval by the prefect, acting as the regional representative of the Minister of the Interior. In practice, however, the prefect's dependence upon local members of Parliament for political good will and electoral activity reduces his scrutiny of the wisdom of local spending almost to a formality.

So far as the expenditure of its grants is concerned, the state exercises an indirect control in various ways. By general legislation, as we have already seen, it has laid down rules of recruitment and scales of pay for local administrative employees which operate so as to guarantee a minimum level of competence. Further, a branch of the Ministry of the Interior regularly inspects the operation of certain services administered locally. The effectiveness of such inspection, however, is questionable because the concern of the Ministry of Interior is all too often with politics rather than with the improvement of administrative standards. Accountability for expenditure is much more effectively provided for. Here the "élite" of the national civil service come into the picture as "general inspectors" of the Ministry of Finance. By unannounced visits and periodic inspections they criticize and suggest improvements in methods of accounting and make what amounts to a pre-audit.

As a further condition of securing state assistance, local authorities are frequently required to keep within such minimum or maximum scales or other conditions as are set by national law or decree. Again, taking unemployment relief as an example, the scale of relief benefits per person or family, as well as the rules of eligibility for relief, is fixed by Paris and must be adhered to by all municipal authorities securing state subsidies.

(4) Despite the fact that direct subsidies to local government services now aggregate as much as 3,000,000,000 francs (around 12 per cent of total local expenditures), an increasing portion of local public works activity has had to be financed by borrowing. The state itself has participated in these credit operations by making annual advances of funds to private lending institutions for specific outlays (e.g., rural electrification, low cost housing, local road construction, etc.). In order to lighten the debt charges borne by *départements* and municipalities, the national government went still further in 1931 and set up a special fund for the purpose of reducing the rate of interest on local public bond issues. Long demanded by the Association of French Mayors, this fund (*Caisse nationale de Crédit aux Départements et aux Communes*) was provided with an initial appropriation of 300,000,000 francs and has since been nourished by the proceeds of national taxes levied on gambling establishments and commercial

sports. Upon request by local government units, the fund is authorized to assume a variable percentage (15 to 75) of the annual interest charge depending upon their size (population) and financial situation, provided the loan does not bear more than six per cent nor run for more than thirty years, and provided the project is approved as socially desirable and economically sound and is not already subsidized by more than 60 per cent of the total outlay. Loans for public works to relieve unemployment receive preferential treatment. By 1935 nearly seven thousand communes and seventy-four *départements* had taken advantage of these cheap borrowing arrangements.

(5) Nine years ago (1930), with a view to reducing the burden of local expenditure, the financial responsibility of caring for forty thousand kilometers of secondary and tertiary roads was transferred directly to the central treasury. This action was taken in partial response to the clamor of local officials that the state should reassume the total cost of financing such major functions (highways, education, and relief) as were not merely of local significance. Here may be noted a trend back toward direct centralization resulting from the depression. For the fiscal year 1937, moreover, an exceptional grant of 110 million francs was made toward the upkeep of the remaining departmental and communal roads and streets.

(6) Faced with the dire necessity of balancing the national budget if devaluation of the franc was to be averted, the Laval Government, during the summer of 1935, imposed a series of emergency economy decrees reaching down to local authorities. First, a flat 10 per cent reduction was ordered on all state expenditures except relief and welfare payments, including subsidies to local services. Next, municipal budgetary procedure (preparation, vote, execution, and audit) was subjected to a revised set of rules by which, among other provisions, the central authorities may reduce non-mandatory municipal appropriations wherever the per capita direct tax levy exceeds a fixed maximum, or municipal debts reach a level "dangerous to government credit." Third, the limitations on the number of local "additional centimes" imposable by local taxing bodies, which were formerly specified anew in each annual budget law, now become permanent at slightly lower levels on the average. In 1937 it was further decreed that whenever the total indebtedness of a commune exceeds 30 million francs,



no further loans, whether short- or long-term, may be floated without the consent of the Council of State. The following year the national government agreed to aid cities in financial distress by guaranteeing the loans necessary to restore solvency, on condition that local fiscal policy be subject to rigid national control until the guaranteed debt is liquidated.<sup>43</sup> These are restrictive measures implying a legislative and administrative control more drastic than is to be found in any American state.

The foregoing account summarizes the major reforms which France has adopted since the war for the purpose of "rationalizing" the fiscal relations of central and local governments. To present the picture in full, the central state has in recent years contributed well over 20 per cent of all local expenditure in one form or another—centrally imposed and locally shared taxes, direct grants in aid, loans, and reduction of interest on local bond issues. In the aggregate, this contribution amounts to nearly 10 per cent of the total "ordinary" national budget. Despite increasing state aid, however, current local budgets continue to show large deficits. By 1937 the aggregate debt of *départements* and communes had reached 40 billion francs. Paris alone accounting for nearly half of this sum.

### *Sec. II. Looking Ahead*

The reform of French local administration and finance is still unfinished. There is little satisfaction with the way in which the existing "system" is working. It is criticized from numerous points of view. Nearly everyone agrees that it is too confused and unduly complex. Some sort of consolidation and codification is demanded on all sides. But there agreement ends.

An analysis of current proposals and counter-proposals does, however, suggest several tentative observations: (1) In a country like France, traditionally used to a large degree of legislative and administrative centralization, there is much to be said for letting the central government finance, and perhaps administer *in toto*, public elementary education, unemployment relief, and major public works projects. Not only would this change give substantial relief to local budgets every-

<sup>43</sup> Decree of 24 May 1938.



where, but it would also facilitate the task of equalizing local tax burdens.

(2) In so far as possible, the effort begun in 1926 to establish a really productive system of separate and independent revenues for local areas should be carried forward. If the state were to surrender completely to the localities the real property tax and allow them exclusive use of the taxes on *occupiers* (analogous to English local "rates"), on professions, and on sales of luxury goods, many French tax experts believe that such a goal could be approached.

(3) On account of the difficulty of evolving a formula of distribution that is equitable and does not at the same time encourage loose local financing, the sharing of centrally imposed and collected taxes with local authorities has not given good results in France.

(4) Similarly, French experience with "earmarked" grants in aid suggests that they may encourage local fiscal irresponsibility unless they are allocated in terms of *measurable* need and their administration is adequately supervised by competent agents of the central government. A good many French municipalities have been "lured" by subsidy and cheap-loan bait into capital outlays beyond their means in order to reduce current maintenance charges.

(5) The problem of how to equalize the burden of local expenditure cannot be solved so long as the central tax and subsidy policy helps to perpetuate the existence of outmoded and pauperized units of local government. For many years a movement to consolidate local taxing and administrative areas has been under way in France. Unfortunately, the political and psychological obstacles to consolidation are as formidable there as in the United States. Since 1926 regional (inter-departmental) and inter-municipal consolidation on an *ad hoc* basis has been permissible for hospital service, the operation of welfare institutions and normal schools, and certain public utilities. But 38,000 communes still function as *general* governmental units, all but seven thousand of them averaging less than one thousand in population. For thousands of these rural communes it is wasteful to maintain the uniformly prescribed governmental organization of mayor, council, tax collector, village police, and separate school. Three thousand "enlarged" communes could perform the task of local government much more efficiently and economically than the existing number. Corre-

spondingly, many observers contend that the ninety *départements* could with advantage be "regionalized" into a fourth as many districts.

(6) If inter-unit consolidation could be achieved, the classification, or zoning, of communes with respect to pattern of government and financial independence would be a logical supplementary step. Large metropolitan centers like Paris, Lyons, and Marseilles might well be allowed more budgetary and administrative independence than smaller urban areas; while strict control over local revenue and borrowing, as well as the use of conditional grants in aid, could normally be restricted to districts largely rural in character.

(7) To a foreign observer, a reform still more fundamental in importance would be to establish a modernized division of local government finance in the national treasury, in place of the uncoordinated and politically-minded services now forming a part of the bureaucracy of the Ministry of the Interior. If the secretariats of the Union of Cities and National Association of Mayors were geared in with this agency in an advisory and technical capacity; and if, further, the latter were provided with a technically competent staff divorced from fear of political interference, an invaluable element for the flexible adjustment and ultimate stabilization of central-local financial relationships would be available. Such a set-up might well include branch offices in the major provincial centers so that technical service and advice could be cheaply and expeditiously furnished to small municipalities.

In the French Republic, the tempo of governmental reform has always been slow. All too often traditionalism and inertia tend to defeat the plans of forward-looking leaders. But some such changes as are here suggested will soon be imperative in the interest of tax equity, economy, and improved public service. For whatever fate may be in store for the existing *national* régime in France, a healthful, vigorous, well-administered *local* community life is essential to the well-being of any state.

## BIBLIOGRAPHY

## GENERAL SURVEYS

Treatment of French local government in English has been scanty and is now largely out of date. Useful summaries may, however, be found in the following standard textbooks:

- Harris, G. M., *Local Government in Many Lands* (Rev. ed., London, 1933), Ch. 2.  
 Munro, W. B., *The Government of European Cities* (Rev. ed., New York, 1927), Section II.  
 Ogg, F. A., *European Governments and Politics* (New York, 1934), Ch. 29.  
 Sait, E. M., *Government and Politics of France* (Yonkers-on-Hudson, 1921), Ch. 9.  
 Valeur, R., "French Government and Politics," in Buell, R. L. (ed.), *Democratic Governments in Europe* (Rev. ed., New York, 1938), pp. 342-354.

In French there exist numerous comprehensive treatises on administrative law which devote varying attention to local government and administration. Of these general works the following may be especially cited:

- Berthélemy, H., *Traité élémentaire de Droit administratif* (13th ed., Paris, 1933), pp. 156-266, 988-1029, 1073-1080.  
 Bonnard, R., *Précis élémentaire de Droit administratif* (2nd ed., Paris, 1935), pp. 262-363, 530-583.  
 Hauriou, M., *Précis élémentaire de Droit administratif* (3rd ed., Paris, 1933).  
 Rolland, L., *Précis de Droit administratif* (7th ed., Paris, 1938).

## SPECIAL STUDIES

1. *Local Government Institutions and Areas*

- Bacquias, H., *Le Conseil général et le Conseil d'arrondissement* (Paris, 1937).  
 Doutre, A., *Les Circonscriptions administratives spéciales* (Bordeaux, 1927).  
 Dubarry, G., *Le Secrétaire de Mairie* (23rd ed., Paris, 1935).  
 Font-Reaulx, P. de, Durnerm, R., and Marizis, J., *Les Conseils de Préfecture* (Paris, 1937).  
 Girolami, J., and Goldenberg, L., *Les Pouvoirs du Maire* (Paris, 1935). Reproduces the complete text of the Municipal Code of 1884.

- Gooch, R. K., *Regionalism in France* (New York, 1931). An admirable analysis of the movement for regional decentralization and consolidation.
- Leroy, Maxime, *La Ville française: Institutions et Libertés locales* (Paris, 1927).
- Maspétiol, R., *L'Organisation municipale* (Paris, 1934).
- Muro, J. de, *Le Conseil général* (Paris, 1937). Contains the complete text of the general Law of 1871 on the *départements*.
- Delobel, J. L., "Une Circonscription administrative: Le Canton," *La Vie communale et départementale* (Paris), Dec., 1935.
- Le Conte, R., "Les Divisions territoriales de la France avant et depuis 1789," *Revue du Droit public* (Paris), July-Sept., 1926.

## 2. Central Control and Grants in Aid

- Dendias, M., *Le Gouvernement local: la Centralisation et la Décentralisation administrative* (Paris, 1930).
- Girolami, J. and Délaporte, J., *Les Subventions de l'Etat aux Collectivités locales* (Paris, 1934).
- Maspétiol, R., and Laroque, P., *La Tutelle administrative: le Contrôle des Administrations départementales, communales, coloniales, et des Etablissements publics* (Paris, 1930).

## 3. Local Administrative Services

- Barde, P., *Les Communes et la Question de l'Habitation* (Paris, 1932).
- Blondeau, A., *La Concession de Service public* (Paris, 1933).
- Capitant, H., and Cuché, P., *Précis de Législation industrielle* (Paris, 1936).
- Comte, P., *De la Concession de Service public* (Paris, 1935).
- Dupeyrat, J., *L'Équipement d'une Commune rurale* (Paris, 1932).
- Félix, M., *L'Activité économique de la Commune* (2 vols., Paris, 1932).
- Monsarrat, G., *Les Voies communales* (Paris, 1931).
- Monsarrat, G., *Police municipale et rurale* (Paris, 1929).
- Pezet de Corval, G., *Le Gaz de Paris: la Ville et les Consommateurs* (Paris, 1934).
- Pillu, G., *L'Assistance publique dans la Commune* (Paris, 1933).
- Pillu, G., *L'Organisation de l'Administration générale de l'Assistance publique à Paris* (Paris, 1934).
- Rouzaud, A., *Le Statut des Agents publics départementaux et communaux* (Rennes, 1934).

Sharp, W. R., *The French Civil Service: Bureaucracy in Transition* (New York, 1931), Ch. 13—an account of the municipal civil service of Bordeaux.

Teitgen, P. H., *La Police municipale générale* (Paris, 1934).

Tetreau, J., *Les Régies municipales* (Paris, 1935).

Dimock, M. E., "Les Entreprises Mixtes," *National Munic. Rev.* (New York), Nov., 1931.

Pissary, A., "Les Nouvelle Formes de Gestion par l'Etat," *Revue des Sciences politiques* (Paris), Oct.-Dec., 1934.

#### 4. *The Metropolitan Region*

Félix, M., *Extension et Aménagement des Villes* (Paris, 1926).

Laurent, R., *Paris—Sa Vie Municipale; Vers le plus grand Paris* (Paris, 1937).

Raiga, E., and Félix, M., *Le Régime administratif et financier du Département de la Seine et de la Ville de Paris* (2nd ed., 2 vols., Paris, 1935).

#### 5. *Local Finance*

Albrespy, M., *Finances et Comptabilité des Communes et des Etablissements de Bienfaisance* (Paris, 1938).

Allix, E., *Traité élémentaire de Sciences des Finances et de la Législation financière française* (6th ed., Paris, 1931), pp. 995-1051.

Boissonnet, J. B., *Réforme des Finances locales* (Paris, 1926).

Delaporte, J., *Le Budget départemental* (Paris, 1930).

Félix, M., *La Réforme générale des Finances locales* (4 vols., Paris, 1922-34). An exhaustive treatment of the problem.

Haig, R. M., *The Public Finances of Post-War France* (New York, 1929), pp. 364-395.

Lainville, R., *Les Finances et le Budget des Communes* (Paris, 1929).

Lainville, R., *Qu'est-ce que le Budget communal?* (2nd ed., Paris, 1933).

Sol, Charles, *Le Budget municipal* (Paris, 1925).

Borrel, A., "Les Budgets des petites Communes rurales," *Revue politique et parlementaire* (Paris), Apr., 1935.

#### DOCUMENTARY AND PERIODICAL MATERIALS

The official texts of all national laws, decrees, and regulations affecting local government may be found in the *Journal Officiel* of the Third Republic. Many of these documents are reproduced in *La Vie communale*

*et départementale*, a monthly review published in Paris by the *Union des Villes et Communes de France*, as well as in the monthly *Bulletin officiel de l'Association des Maires de France* (Paris). These two periodicals also contain valuable signed articles on local government problems, as well as news and notes of current municipal activity.

On administrative and fiscal matters the annual reports of the *Inspection générale des Finances* (published by the Ministry of Finance), and of the *Inspection générale des Services administratifs* (published by the Ministry of the Interior), are storehouses of information. The latter Ministry also publishes a monthly *Revue générale d'Administration* which abstracts current laws and decrees affecting central-local relations.

Other French periodicals that may be consulted to advantage include the *Revue d'Administration communale*, the organ of the National Federation of Public Service Employees; *Le Fonctionnaire municipal*, published by the Association of Municipal Secretaries; the *Journal d'Administration des Communes rurales* (monthly, Bordeaux); *Urbanisme* (bi-monthly, Paris); and the *Revue des Finances communales* (monthly, Paris).

Mention should be made also of the three quarterly publications of the International Union of Local Authorities (3 bis, Rue de la Régence, Brussels). The first of these, which appears in English, is *Local Government Administration*; the other two, both in French, are *L'Administration locale* and *Les Tablettes documentaires* (the latter containing factual résumés of books and periodicals on local government developments throughout the world).

The larger French cities publish an official weekly bulletin which reproduces the texts of all municipal ordinances, decrees, orders, instructions, appointments, and proclamations. In addition, detailed printed (or mimeographed) reports on the operation and costs of municipal services may be obtained upon direct inquiry from the *Secrétaire de la Ville* in each city. These reports usually appear either annually or biennially, although in many of the smaller cities only at the end of the mayor's term of office. Printed copies of the municipal budget and personnel regulations may be secured from this same official, in addition to miscellaneous material on specific municipal institutions and enterprises.

## PART II. FUNDAMENTAL DOCUMENTS:

A: EXTRACTS FROM THE MUNICIPAL CODE OF 1884 AS REVISED TO  
SEPTEMBER 1937 (Translation by the Author)

[Only the parts that seemed most important have been retained in this reprint. Omissions of a section or more are indicated by asterisks (\* \* \*), and smaller omissions by periods (. . .).]

## TITLE I

*The Communes*

Art. 1. The municipal organization of each commune shall consist of the municipal council, the mayor, and one or more adjoints.

Art. 2. A change in the name of a commune may be made by a decree of the President of the Republic upon request by the municipal council and after consultation with the general council and the Council of State.

Art. 3. Whenever there is question of transferring the governmental seat of a commune, of uniting several communes into one, or of detaching a section of a commune, whether for joining it to another or for establishing a separate commune, the prefect or sub-prefect shall institute in the interested communes an inquiry on the proposal and the conditions of its realization.

After the inquiry, the municipal and district councils shall give their opinion and the proposal shall be submitted to the general council. \* \* \*

Art. 5. No new commune may be created except by virtue of a law, after consultation with the Council of State. \* \* \*

## TITLE II

*The Municipal Council*Chapter I. *Formation of Municipal Councils*

Art. 10. The municipal council shall be composed of 10 members in all communes of 500 inhabitants or less;

of 12	in those	of	501 to	1,500	inhabitants
" 16	"	"	1,501	2,500	"
" 21	"	"	2,501	3,500	"
" 23	"	"	3,501	10,000	"
" 27	"	"	10,001	30,000	"
" 30	"	"	30,001	40,000	"
" 32	"	"	40,001	50,000	"
" 34	"	"	50,001	60,000	"
" 36	"	"	60,001	and above	



In cities divided into several *mairies* the number of councillors shall be increased to three per *mairie*.

Art. 11. The election of members of the municipal council shall be by general ticket [*scrutin de liste*] for the entire commune.

Nevertheless, a commune may be divided into electoral districts, each of which shall elect a number of councillors proportional to the total number of registered voters, but only in the two following circumstances:

(1) When the commune consists of several distinct and separate settlements of inhabitants, in which case each district shall elect not less than two councillors;

(2) When the aggregate population of the commune is more than 10,000 inhabitants, in which case no district may be formed from fractions of territory belonging to different *cantons* or municipal *arrondissements*. . . . None of these districts shall elect less than four councillors.

In all cases where division is authorized, each district should be composed of contiguous territory. \* \* \*

Art. 13. The prefect or the sub-prefect may, by special order published at least ten days in advance, divide the commune into voting precincts, in each of which, however, the same candidates shall be voted for.

To each voter there shall be delivered an electoral card. This card shall indicate the location of the polling place where he should vote.

Art. 14. Municipal councillors shall be elected by direct universal suffrage.

All French citizens at least 21 years of age who are not otherwise disqualified by law have the right to vote. [The remainder of this article lists the residential and other qualifications for voting.]

Art. 15. The electorate shall be convened by order of the prefect for the general renewal of a municipal council and by order of the sub-prefect in all other cases.

The notice of the election shall be published in the commune at least 15 days prior to the election, which shall always take place on a Sunday. This notice shall indicate the place where the polling shall occur, as well as the hour at which the polls shall open and close. \* \* \*

Art. 17. The polls shall be presided over by the mayor, the *adjoints*, and the municipal councillors, in order of seniority, or in case of their enforced absence, by electors designated by the mayor. \* \* \*

Art. 22. Throughout the duration of the poll a copy of the list of voters, certified by the mayor and containing the name, domicile, and qualification of each person registered, shall be placed on the table around which the electoral board shall sit.

Art. 23. No one may be allowed to vote unless he is registered on this list.

However, those electors shall be permitted to vote who, although not

registered, submit a decision of a justice of the peace ordering their registration, or an order of the Court of Cassation annulling a judgment which shall have pronounced their elimination from the list.

Art. 24. No elector bearing arms of any kind may enter a polling place.

Art. 25. All voters shall procure ballots prepared outside the polling place.

The ballot paper should be white and without any identification mark.

The voter shall hand to the presiding official his folded ballot.

The latter shall insert it into the ballot box which, before the opening of the polls, should have been locked with two keys, one remaining in the possession of the presiding officer and the other with the senior assistant judge.

The vote of each elector shall be noted on the list opposite his name by the signature or initials of one of the election officials.

Art. 26. The presiding official shall record, when the voting begins, the hour at which the poll opened.

The poll may not be closed until after it has been open for at least six hours.

The presiding official shall record the hour at which he declared the poll closed; after this declaration, no vote may be received.

Art. 27. After the close of the poll, the votes shall be counted as follows:

The ballot box shall be opened and the number of ballots verified.

If the total is greater or less than the number of those voting, this fact shall be noted in the report.

The election board shall designate from among those voters present a certain number of tellers.

The presiding official and board members shall supervise the counting operations.

If there are less than 300 voters, they may conduct these operations themselves.

Art. 28. Ballots containing more or less names than the quota of seats to be filled are nevertheless valid.

The last names written in beyond this quota shall not be counted.

Blank or illegible ballots, those lacking sufficient designation, or those on which the voters reveal their identity, shall not be included in the total count, but shall be attached to the report.

Art. 29. Immediately following the count, the presiding official shall proclaim the result.

A report [*procès-verbal*] of the poll shall be drawn up by the secretary of the board. This document shall be signed by him and the other board members. One copy, likewise signed by the secretary and board

members, shall at once be sent, by way of the sub-prefect, to the prefect, who shall enter the fact upon a register and give a receipt for the report. A summary of the report shall at once be publicly posted by the mayor.

All ballots other than those attached to the report shall be burned in the presence of the electors.

Art. 30. No one shall be deemed elected on the first poll unless he has secured (1) an absolute majority of all votes cast and (2) a total vote equal at least to one quarter of all the registered voters. On the second [run-off] poll, a plurality shall suffice for election irrespective of the number of votes cast. If several candidates receive the same number of votes, the eldest shall be declared elected.

In case a second poll is necessary, it must take place on the following Sunday. The mayor shall issue the necessary orders.

Art. 31. Save for the restrictions indicated in the last paragraph of this article and the two following articles, all voters of the commune registered on January 1st of the year of the election, and at least 25 years of age, are eligible to stand for election to the municipal council.

Enlisted men and employees of the army and navy in active service are not eligible. \* \* \*

Art. 41. Municipal councillors shall be elected for six years. [Until 1929 their term was four years.] Their mandates are all renewable, the first Sunday in May, throughout France, even though they were elected to fill vacancies in the interval.

Art. 42. When a municipal council, because of vacancies, has lost a third of its members, by-elections shall be held within two months of the last vacancy.

Nevertheless, during the year preceding any regular election, by-elections are not obligatory except when a council has lost half of its members.

In those communes divided into electoral districts, there shall always be by-elections whenever a district has lost half of its quota of councillors.

Art. 43. A municipal council may be dissolved only by a decree of the President of the Republic giving the reasons therefor and issued in the name of the Council of Ministers and published in the *Journal Officiel*; and in the colonies covered by the present law, by order of the governor in privy council, inserted in the *Journal Officiel de la Colonie*.

In urgent cases, a council may be provisionally suspended by an order of the prefect giving the reasons therefor; the prefect shall immediately report the fact to the Minister of the Interior. Such suspension may not exceed one month. . . .

Art. 44. In case of the dissolution of a municipal council or the resignation of all its active members, and where no council can be constituted, a special commission shall perform its functions.

Within a week following the dissolution or the acceptance of resignations, this special commission shall be appointed by decree of the President of the Republic, and in the colonies, by order of the governor.

The number of members composing the commission shall be three in communes where the population does not exceed 35,000 inhabitants. It may be increased up to seven in cities with a larger population.

The special commission shall elect its own president and, if need be, its own vice-president.

The powers of this commission shall be limited to purely administrative acts of an urgent nature. In no case may it make financial commitments beyond the available resources of the current fiscal year. It may neither prepare the communal budget nor receive the accounts of the mayor or *receveur*, nor modify the personnel or organization of the public schools.

Art. 45. Whenever a municipal council is dissolved, or, by application of the preceding article, a special commission is appointed, a new election must be held within two months of the dissolution or the last resignation, unless the date of the next regular election is less than three months distant.

The functions of the special commission shall automatically expire as soon as the new council is constituted.

## Chapter II. *Operation of Municipal Councils*

Art. 46. Municipal councils shall hold four regular sessions a year: in February, May, August, and November.

The length of each session shall be fifteen days, but it may be prolonged with the authorization of the sub-prefect.

The session during which the budget is considered may last six weeks.

Art. 47. The mayor may convene the municipal council any time he deems fit. He must convene it whenever requested by a third of the active members of the council.

The prefect and sub-prefect may also convene the municipal council. \* \* \*

Art. 49. Municipal councillors shall be ranked in the following manner: Whether there are electoral districts or not, the rank order is determined (1) by the initial date of election; (2) among councillors elected the same day, by the popular vote received; and (3) where vote is equal, by priority of age.

A copy of the rank list shall always be available at the *mairie*, the sub-prefecture, and the prefecture, and open to public inspection.

Art. 50. The municipal council may conduct business only when a majority of its active members are present. . . .

Art. 51. All decisions shall require an absolute majority of those voting. In case of a tie, except on a secret ballot, the president's vote shall break the tie. Upon the demand of a quarter of the members, a roll call must be taken; the names of those voting, with the indication of their votes, shall be inserted in the minutes.

Whenever a third of the members shall demand it, as well as for all appointments, a secret ballot must be taken.

In the latter case, if, after two ballots, no candidate has obtained an absolute majority, a plurality vote shall be sufficient on the third ballot; in case of a tie, the eldest candidate shall be declared elected.

Art. 52. The mayor, or his deputy, shall preside over the municipal council.

For the meetings during which administrative accounts are considered, the council shall choose another presiding officer.

In this case, the mayor, even though he is no longer in office, may be present, but he must withdraw when the vote is taken. The presiding officer shall submit the results of the discussion directly to the sub-prefect.

Art. 53. At the beginning of each session and throughout its duration, the municipal council shall designate one or more of its members to perform the duties of secretary.

To assist these members, the council may appoint an auxiliary staff from outside its membership; this staff may attend meetings but not participate in the discussion.

Art. 54. The meetings of municipal councils shall be public. Nevertheless, upon the demand of three members or the mayor, the council, by standing vote without debate, may resolve itself into a secret committee.

Art. 55. The mayor alone may police the municipal assembly. He may expel spectators or arrest any disorderly individual. In case of crime or misdemeanor, he shall draw up an affidavit and submit it at once to the *Procureur* [prosecutor] of the Republic.

Art. 56. The minutes of each meeting shall, within a week, be posted in summary form at the *mairie*. \* \* \*

Art. 59. The municipal council may appoint, during the course of each session, committees charged with the study of questions submitted to the council either by the administration or upon the initiative of any of its members.

Council committees may hold meetings during the interval between council sessions.

Committees shall be convened by the mayor, as *ex-officio* chairman, within a week after their appointment, or earlier if requested by a majority of the members thereof. At its first meeting each committee shall designate a vice-president who may convene and preside over its subsequent meetings whenever the mayor is absent or detained.

Art. 60. Any member of a municipal council who, without explanation satisfactory to the council, shall miss three successive meetings, shall be declared by the prefect as having resigned, with right of appeal within ten days of such notification to the council of prefecture.

Resignations shall be addressed to the sub-prefect and shall take effect as soon as the prefect acknowledges their receipt, or, in the absence of such acknowledgment, one month after the resignation has been dispatched by registered letter a second time.

### Chapter III. *Powers of Municipal Councils*

Art. 61. The municipal council shall regulate, by its deliberations, the affairs of the commune.

It shall give its opinion, whenever required by law or ordinance, or requested by superior authority.

It may protest, if need be, against the quota of direct taxes assigned to the commune.

It may pass resolutions on all matters of local interest. . . .

Art. 62. Within a week a report of every decision shall be submitted by the mayor to the sub-prefect, who shall record it on a register and immediately deliver a receipt for it.

Art. 63. Null and void without appeal are: (1) all decisions of a municipal council relating to a subject foreign to its powers or arrived at outside a legal session; (2) all decisions taken in violation of any law or national "ordinance of public administration."

Art. 64. Subject to annulment are those decisions in which there shall have participated any members of the council materially interested, either in their own name or as agents, in the subject of the decision. \* \* \*

Art. 68. Decisions bearing upon the following matters may not be executed until after approval by superior authority:

- (1) the terms of all leases exceeding 18 years;
- (2) the alienation and exchange of communal property;
- (3) the acquisition of real estate, new construction, or partial or complete reconstruction, whenever the outlay includes borrowed funds or other extraordinary resources requiring approval;
- (4) any change in the employment of a communal property already used by a public service whenever the change is required by existing law or ordinance to be authorized, or is the result of an engagement taken by the commune;
- (5) the classification, reclassification, alteration, prolongation, widening, discontinuance, or naming of streets and public squares, and the establishment and modification of plans for straightening municipal roads . . .
- (6) the communal budget;



- (7) supplementary credits;
- (8) extraordinary taxes and bond issues, except as exempted by article 141 of the present law;
- (9) local taxes whose imposition is authorized by law in the interest of the commune;
- (10) *octrois* envisaged by articles 137 and 138 of the present law;
- (11) the establishment, suppression, or alteration of fairs and cattle markets and any changes in their operation;
- (12) the intervention of the commune, either by direct operation or financial participation, in enterprises, even of a coöperative or commercial character, having as their object the provision of public services, feeding and housing the population, relief, hygiene, and social welfare services, or urban improvements.

Those decisions which need not be submitted to prefectoral approval shall nevertheless not become effective until 15 days after they have been reported to the prefecture or sub-prefecture.

The prefect, or the sub-prefect in those communes where the latter regulates the budget, may shorten this period. \* \* \*

Art. 71. The municipal council shall pass upon the administrative accounts which shall be presented to it annually by the mayor, in conformance with article 151 of the present law. . . .

Art. 72. It shall be prohibited to every municipal council to publish any proclamations or memorials, to express political opinions, or, except in those cases allowed by law, to communicate with any other council . . .

### TITLE III

#### *Mayor and Adjoints*

Art. 73. In each commune a mayor and one or more *adjoints* shall be chosen from the membership of the municipal council.

The number of *adjoints* shall be one in those communes of 2,500 inhabitants or less and two in those of 2,501 to 10,000. In communes with a larger population there shall be one additional *adjoint* for each increment of 25,000, provided that the number may not exceed 12 except in Lyons, which shall have 19. . . .

Upon the mayor's recommendation, the municipal council is empowered to create, for the duration of its mandate, one or more supplementary posts of *adjoints*.

Nevertheless, the total number of *adjoints* in a commune may not be more than double the number determined by the population in communes of less than 35,000 inhabitants, nor exceed this number by more than 50 per cent in cities having a larger population.



In no case may the number of *adjoints* be greater than a third of the total legal membership of the municipal council.

Art. 74. The offices of mayor, *adjoint*, and municipal councillor shall carry no salary. They shall merely give right to reimbursement for expenses necessitated by the execution of special duties. Municipal councils may, from the ordinary resources of the commune, appropriate to the mayor an entertainment allowance.

Art. 75. Whenever any obstacle or distance renders communication difficult, dangerous, or temporarily impossible between the *chef-lieu* and any geographical section of a commune, a branch office of *adjoint* may be instituted by the council.

This *adjoint*, elected by the council, shall be chosen from the councillors, or, in the absence of any councillor living in such a section of the commune, or if he cannot serve, from the inhabitants of the section. He shall perform the functions of *état civil* [recording of vital statistics, etc.] and may be charged with the execution of the laws and police regulations in such a section of the commune. He shall not be assigned any other duties.

Art. 76. The municipal council shall elect the mayor and *adjoints* from its membership by secret ballot and absolute majority vote. . . . \* \* \*

Art. 81. The term of mayor and *adjoint* shall coincide with that of the municipal council. . . .

Art. 82. The mayor alone shall be responsible for the administration of the commune; but he may, under his surveillance and on his responsibility, delegate by order a part of his functions to one or more of his *adjoints*, and, in their absence or detention, to other members of the municipal council.

Such delegation shall continue until it shall have been specifically revoked.

Art. 83. In those cases where the mayor has interests in opposition to those of the commune, the municipal council shall designate another of its members to represent the commune in judicial litigation or the conclusion of contracts.

Art. 84. In case of absence, suspension, dismissal, or any other situation preventing the exercise of his office, the mayor shall be provisionally replaced, for the totality of his functions, by an *adjoint*, in order of appointment, or, lacking *adjoints*, by such municipal councillor as may be designated by the council unless seniority is followed.

Art. 85. In case the mayor refuses or neglects to perform any act prescribed by law, the prefect, after having requested action, may proceed to take action himself or through a special delegate.

Art. 86. Mayors and *adjoints*, after having been heard or invited to submit an explanation of the acts with which they are charged, may be

suspended by order of the prefect not to exceed one month, but this period may be extended to three months by the Minister of the Interior.

They may be dismissed only by decree of the President of the Republic. . . .

Art. 87. In the contingency covered by article 44, the president, or if he is not available, the vice-president of the special commission shall fulfil the functions of mayor. These functions shall terminate as soon as a new council is installed.

Art. 88. The mayor shall make appointments to all positions of municipal employment for which the existing laws, decrees and ordinances do not prescribe a different appointing authority. He may suspend or dismiss the incumbents of these positions. He may require any employees appointed by him to secure the consent of the prefect or sub-prefect prior to administering their oath of office.

In every commune now employing permanent administrative personnel, as well as in every commune where such employment shall hereafter be created, the municipal council shall, within six months, by action submitted to prefectural approval, establish rules governing the recruitment, promotion, and discipline of such employees.

The decision of the council shall become effective after a period of forty days if the prefect, by order indicating the reasons therefor, has not refused to approve it. In case the prefect withholds his approval, the commune may, within a month, appeal to the Council of State, which shall rule definitively on the matter within two months.

If the municipal council fails to take action within a period of six months after the promulgation of the present law or the creation of new administrative positions, a prefectural order shall apply to the commune the standard personnel regulations formulated by the Council of State. [See B, pp. 218-222, *infra*, for the text of these regulations.] . . . \* \* \*

Art. 90. The mayor shall be responsible, under the control of the municipal council and the supervision of the superior administrative authorities, for

- (1) the maintenance and administration of communal properties;
- (2) the management of municipal revenues and the supervision of communal establishments and communal accounts;
- (3) the preparation and submission of the budget and the authorization of expenditures;
- (4) the direction of public works;
- (5) the application of measures relative to municipal streets;
- (6) the making of contracts of purchase, the leasing of property and the adjudication of controversies arising out of public works contracts, according to the terms laid down by the laws and ordinances and by articles 68 and 69 of the present statute;

(7) the conclusion, in the same form, of contracts of sale or exchange, the acceptance of gifts or legacies, and such other acquisitions or transactions as are authorized by the present statute;

(8) the representation of the commune before the courts, either as plaintiff or defendant;

(9) the application, in coöperation with property owners and holders of hunting permits in woods and forests, of all measures necessary for the destruction of harmful animals . . . ;

(10) and, in general, the execution of all decisions of the municipal council.

Art. 91. The mayor, under the supervision of superior authority, shall be responsible for municipal and rural policing and the execution of all orders from superior authority relating thereto.

Art. 92. The mayor shall be responsible, under the authority of higher administration, for

(1) the publication and execution of all laws and ordinances;

(2) the execution of all measures of general safety; and

(3) such special functions as may be conferred upon him by law.

Art. 93. The mayor, or failing action by him, the sub-prefect, shall see to it that every deceased person, without regard to cult or creed, shall be decently embalmed and buried.

Art. 94. The mayor shall issue orders for the purpose of

(1) applying local measures relating to objects consigned by law to his vigilance and authority;

(2) publishing promptly the text of laws and police regulations and ensuring their observance by the citizenry.

Art. 95. All orders issued by the mayor shall be immediately submitted to the sub-prefect, or, in those *arrondissements* where the prefecture is located, to the prefect.

The prefect may annul such orders or suspend their execution.

Orders in the nature of permanent regulations shall not become effective for a month following their receipt by the sub-prefect or prefect.

Nevertheless, in urgent circumstances, the sub-prefect or prefect may order their immediate application.

Art. 96. Orders by the mayor shall not become obligatory until after they have been brought to the attention of the interested parties by publication and posting on an official bulletin board, if they contain general provisions, and in other cases by individual notification.

Publication shall take the form of a declaration certified by the mayor.

Notification shall be confirmed by a receipt from the interested party, or, failing this, by the preservation of the original notice in the archives of the *mairie*.

All orders, declarations of publication, and notifications shall be entered, with their date, on the registry of the *mairie*.

Art. 97. The municipal police power shall have as its object the assurance of good order, safety, and public sanitation. . . .

Art. 98. The mayor shall be charged with the policing of national and departmental highways and other means of communication inside cities and villages, but only in so far as the traffic on such highways is concerned. . . . \* \* \*

Art. 102. Every commune may have one or more constables [*gardes champêtres*]. The latter shall be appointed by the mayor; they should be approved and commissioned by the sub-prefect, or by the prefect in the "county" seat [*arrondissement du chef-lieu*]. . . .

Art. 103. In cities having more than 40,000 inhabitants, the organization of police personnel shall be regulated, after consultation with the municipal council, by decree of the President of the Republic.

If any municipal council shall fail to appropriate the necessary funds for the police, such appropriation shall be incorporated in the municipal budget by decree of the President of the Republic, after consultation with the Council of State.

In all communes, police inspectors, brigadiers and sub-brigadiers, and agents appointed by the mayor, must be approved by the sub-prefect or by the prefect. They may be suspended by the mayor, but only the prefect or sub-prefect may dismiss them. \* \* \*

## TITLE IV

### *Communal Administration*

#### *Chapter I. Property, Works, and Communal Establishments*

[Arts. 110-120 lay down detailed rules governing the letting of public works contracts and the financial management of municipal property and welfare institutions.]

#### *Chapter II. Judicial Actions*

[Arts. 121-131 specify the conditions under which a commune may sue or be sued in the courts.]

#### *Chapter III. The Communal Budget*

##### *Section 1: Receipts and Expenditures*

Art. 132-135 [as modified by the Decree-Law of 23 October 1935]. The communal budget shall be divided into an ordinary and an extraordinary section.

The revenues in the ordinary section shall include all annual and permanent revenues of the commune.

Expenditures in the ordinary section shall include all annual and permanent expenditures of communal utility; debt service shall also be included under this heading.

Revenues in the extraordinary section shall include all temporary or emergency revenues.

Expenditures in the extraordinary section shall include emergency or temporary expenditures, especially capital outlays. Such expenditures shall be covered by the surplus of ordinary and extraordinary revenues.

The communal budget shall be divided into chapters and articles as determined by decree issued on the recommendation of the Ministers of the Interior and Finance. \* \* \*

### *Section 2: Vote and Execution of the Budget*

Art. 145 [as modified by the Decree-Law of 23 October 1935]. The budget of each commune shall be prepared by the mayor, voted by the municipal council, and approved by the prefect.

Even when the budget covers all mandatory expenditures, superior authority may reduce optional items of expenditure included in the budget:

(1) if the total per capita direct tax burden exceeds a maximum established in conformity with indices set by decree countersigned by the Ministers of the Interior and Finance;

(2) or if the ratio of receipts for debt amortization to the total revenue of the commune is more than the maximum established in conformity with the indices fixed by the foregoing procedure.

In all cases where this power is employed, the higher authorities shall take into account the special situation of each commune.

Whenever the budget of a commune has not been voted in balance by the municipal council, the prefect or the sub-prefect shall return it to the mayor within 15 days following its deposit at the prefecture or sub-prefecture. The mayor shall submit it within 10 days for reconsideration by the communal assembly.

The latter should put the budget into balance within a week and return it immediately to the prefecture or the sub-prefecture. If the budget, having been considered a second time, is not balanced, or if it is not returned to the prefecture or the sub-prefecture within a month dating from its return to the mayor for reconsideration, the prefect shall balance the budget.

Art. 146. Credits recognized as necessary subsequently to the approval of the budget shall be voted and authorized in conformance with the preceding article.

Art. 147. Any municipal council may include in the budget an appropriation for unforeseen expenditures.

The amount of this appropriation may not be reduced or deleted except in so far as the ordinary revenues, after all mandatory items are provided for, do not cover it.

The appropriation for unforeseen expenditures may be drawn upon by the mayor.

In the first session following each such disbursement, the mayor shall render an accounting to the municipal council, with supporting documents, of how the appropriation was used. These documents shall be attached to the report of the meeting.

This appropriation may be utilized only to meet urgent expenditures for which no credits were previously provided in the budget. \* \* \*

#### Chapter IV. *Communal Accountability*

Art. 151. The mayor's accounts for the preceding fiscal year shall be presented to the municipal council before consideration of the budget.

The mayor's accounts shall be approved by the authority qualified to regulate the budget.

Art. 152 [as revised by the Decree-Law of 23 October 1935]. The mayor shall issue treasury warrants.

If he refuses to approve any regularly authorized expenditure, this shall be done by order of the prefect. Any order thus issued shall take the place of the mayor's warrant.

In case of need, orders by the mayor shall fix the conditions under which one or more of his *adjoints* may authorize or approve expenditures.

During the course of the year, the mayor shall propose to the municipal council an additional budget in which shall be included (1) as revenues: any excess of receipts realized at the end of the preceding year, revenues to be collected as of the preceding year, new revenues realized since January 1st, and revenues which were not anticipated when the initial budget was voted; (2) as expenditures: unpaid balances from the preceding year and new expenditures for the current year which could not be anticipated when the initial budget was voted. Each of these items of revenue and expenditure shall be added to the total in the corresponding article in the initial budget.

All mayors shall keep administrative accounts as prescribed by decree.

The rules stipulated herein shall be applicable to *régies municipales* [municipal utility enterprises].

With respect to all *régies municipales* of an industrial or commercial character, their operations shall be totaled in two articles, one for revenues, the other for expenditures, in the budget and accounts of the com-

mune. The details of these operations shall be recapitulated in the annexed budget and annexed account of each *régie*.

Nevertheless, the provisions of the present article shall not apply in any case where it has been otherwise ordered by law or special decree.

Art. 153. Communal revenues and expenditures shall be supervised by an accounting officer, charged alone and upon his responsibility with the collection of all revenues of the commune and all sums due it, as well as with the payment of expenditures warranted by the mayor, up to the total of the regularly voted credits.

All tax rolls and local assessments must be submitted to this accounting officer.

Art. 154. All municipal revenues for which the laws and ordinances have not prescribed a special method of collection shall be entered on lists prepared by the mayor. These lists shall become effective after they have been inspected by the prefect or the sub-prefect . . . \* \* \*

Art. 156 [as amended by Decree of 14 June 1938]. The *percepteur* [national tax collector] shall exercise the functions of municipal tax collector in all communes where the ordinary revenues have not exceeded two million francs for three consecutive years. In addition, communes with less than 15,000 inhabitants, regardless of their total ordinary revenues, are not obliged to maintain a special municipal collector. However, in those communes which are not the headquarters of a collection district and whose ordinary revenues have exceeded a million francs for three consecutive years, the municipal council may request that these functions be assigned to a special municipal collector.

When the total ordinary revenue of a commune and its independent welfare establishments is more than two million or one million francs, depending upon whether the commune is or is not the headquarters of a collection district, the financial management of the commune may likewise be assigned to a special collector on the basis of an agreement between the municipal council and the administrative boards of such welfare establishments.

This special collector shall be appointed by decree issued upon the recommendation of the Minister of Finance. He shall be chosen from a list of three names presented by the municipal council after discussion of all candidacies which have been submitted. The Minister of Finance may request that a new list be presented.

Art. 157. The accounts of the municipal collector shall be audited by the inter-departmental council of prefecture, with appeal to the Court of Accounts, in those communes whose ordinary revenues have not exceeded 250,000 francs during the last three years.

For all communes with larger revenues, such accounts shall be audited and definitely closed by the Court of Accounts.



These provisions shall apply to the accounts of treasurers of hospitals and other charitable establishments. \* \* \*

## TITLE V

### *Undivided Property and Rights Belonging to Several Communes*

[Arts. 161-163 provide that such property and rights may be administered by a syndical commission appointed by and from the municipal councils concerned.]

## TITLE VI

### *Provisions Relative to Algeria and the Colonies*

[Arts. 164-166 omitted.]

## TITLE VII

### *General Provisions*

[Art. 167 refers to the disposition by municipalities of church property.]

[Art. 168 lists all laws and parts thereof repealed by the present code.]

## TITLE VIII

### *Inter-Communal Syndicates*

(Added by the Law of 22 March 1890 as subsequently revised)

[Arts. 169-180 indicate (1) the procedure for setting up such joint services by two or more communes and (2) the method of administering and financing them.]

## B. STANDARD PERSONNEL REGULATIONS FOR MUNICIPALITIES

(As revised by the Council of State, Decree of 6 Jan. 1938,  
in conformance with the Law of 12 March 1930 modifying  
Article 88 of the Municipal Code of 5 April 1884)

(Translation by the Author)

*General Provisions*

Art. 1. The present regulations shall cover all appointees to exclusively communal positions on a permanent basis for whom the laws, decrees, and ordinances do not prescribe a special power of appointment.

Within six months from the effective date of these regulations, the municipal council shall prepare a list of such positions; this list may be subsequently revised by the same agency. No position on the list established by the municipal council may be filled except by an appointee who has satisfied the conditions laid down by the present regulations.

In case the municipal council fails to prepare the list referred to above within six months, the prefect shall *ex officio* perform the task.

*Recruitment*

Art. 2. With the exception of posts reserved to war veterans and their widows, no person may be permanently appointed to the municipal civil service who has not passed a competitive examination, the content of which shall have been fixed by the municipal council, or who has not served a probationary period of one year in the position concerned.

Nevertheless, admission to the probationary stage for appointment to the rank of chief of service, as determined by the municipal council, may be granted by means of a non-assembled examination of credentials.

Examination programs shall be made available to all interested persons in the offices of the *mairie*, as well as at the prefecture and sub-prefectures of the department and neighboring departments.

Art. 3. In order to compete, all candidates, men or women, must be French citizens in possession of their full legal rights and at least 21 years of age, and, except for candidates for the post of chief of service, be no more than 30 years old.

This maximum age limit shall be increased by a number of years equal to the duration of military service, or the duration of service as a permanent employee in any other public administrative jurisdiction.

Candidates of male sex must give evidence of having completed their active military service as fixed by the law on the recruitment for the army, or of having been definitely exempted.

The municipal council shall determine what positions shall be open to women.

Every candidate, following a medical examination, must have been declared physically fit to fill the position sought.

Art. 4. The mayor shall set the date of each examination, as well as the number of candidates to be passed, after taking into account the probable number of vacancies during the ensuing interval of two years. He shall certify the list of candidates to be admitted to the examination.

Art. 5. The examining board shall be composed of the mayor or delegate or legal deputy, as president, of two qualified persons designated by the municipal council, of the municipal secretary, and, depending upon the case, either the chief of the service concerned or his delegate, or a supervisory official designated by the mayor.

The list of successful candidates shall immediately be posted at the *mairie*. It shall also be transmitted to the prefect for insertion in the *Recueil des Actes administratifs de la Préfecture*.

Art. 6. Successful candidates shall be admitted in order of rank to the probationary stage of one year as indicated in article 2.

At the completion of this stage, the mayor, after consultation with the chief of service and municipal secretary, must either appoint the probationer to the position sought or impose upon him a second and final probationary stage not to exceed one year, or discharge him. No discharged candidate may claim an indemnity or the application of articles 17 ff. of the present regulations. In case of appointment, the probationary period shall count in the determination of seniority of service.

Nevertheless, no probationer definitively exempted from active military service may be appointed until after a supplementary period equal to that of his active military service if he had not been definitively exempted; during this supplementary period he shall retain the status of probationer; the mayor may discharge him under the conditions referred to in the preceding paragraph. In case of appointment, this supplementary period shall not be taken into account for promotion.

Candidates who pass an examination may not be admitted to the probationary stage until after the exhaustion of any list of candidates who have previously passed.

When there is no vacancy for which a probationer is qualified, the probationary period shall be extended until there is such a vacancy.

Art. 7. In case no applicants pass an examination, the mayor may admit to the probationary stage either a candidate from some other administrative jurisdiction than the commune, or a candidate who has passed a similar examination held in another commune.

Art. 8. Whenever the municipal council pronounces the impossibility of applying, for certain specified positions, the provisions of articles 2,

4, 5, 6, and 7, recruitment for these positions shall take place under such conditions as shall be set by the council, provided that the provisions of article 3 relative to eligibility for competitive examination may not be violated. This action by the council must be submitted for approval by the prefect.

Art. 9. Except for the requirements laid down by article 3, the provisions of the foregoing articles shall not be applicable to such positions as doormen, road menders, guards, or, in general, those that involve manual labor only.

Nevertheless, applicants for such positions shall not be definitively appointed until after a probationary stage of six months and the recommendation of the chief of service. Any applicant who, at the expiration of this period, has not been appointed shall be discharged without any claim to compensation or the application of articles 17 ff. of the present regulations. The probationary period shall be counted in determining seniority of service.

Art. 10. Every appointment to a position shall be at the minimum salary set for such position by the municipal council.

### *Promotion*

Art. 11. Advancement within each grade of employment shall take place from one class to the immediately superior class.

No employee may be advanced to a superior class or receive any increase in salary without having been placed on a special list certified by the mayor, before July 1st of each year, upon the recommendation of a committee composed of the mayor or his delegate or legal deputy, as president, of two municipal councillors designated by their colleagues, of the municipal secretary, and of the chiefs of service.

Art. 12. Entries of names on this list shall be made on the basis of two selections by seniority to one for individual merit.

The number of names should correspond to the number of advancements by class or salary increases which are anticipated for the current year.

Advancements by class or salary increases shall be granted by the mayor, following the order in which names appear on the list, to those employees who have served at least two years in a given class or at a given salary.

Art. 13. Promotion to a higher grade shall be by individual merit for all categories of employment.

No employee may be appointed to a higher grade without having been placed on an aptitude list drawn up by the mayor upon the recommendation of the committee referred to in paragraph 2 of article 11 and constituted under the conditions fixed by that article.

The entry of names on the aptitude list shall be made in order of seniority of service in the position currently held.

Appointments shall be made following the order in which names appear on the list.

Art. 14. If the municipal council decides that the number of employees is so small as to make it impossible to draw up an annual list (as specified in article 11), the committee referred to in that article shall annually recommend to the mayor those employees who appear to merit advancement in class or a salary increase.

These advancements in class or salary increases shall be granted by the mayor following the order of such recommendations, which shall take into consideration, in so far as possible, seniority of service.

Art. 15. If the municipal council decides that the number of employees is so small as to make it impossible to draw up an annual aptitude list (as specified in article 13), every promotion to a higher grade shall be determined by individual merit as recommended by the committee referred to in paragraph 2 of article 11, which shall meet whenever any vacancy has to be filled or any new position is created.

### *Discipline*

Art. 16. There shall be kept at each *mairie* a service record for every employee, containing all the documents concerning him.

No document other than the comments or reports of superior officers may be inserted in this *dossier* of any employee unless he shall have been allowed to see such document in advance.

Aside from the comments and reports mentioned in the preceding paragraph, this *dossier* shall be confined to standardized service ratings.

Interested employees may demand the right to see these ratings each year in December without prejudice to the application of article 65 of the Law of 22 April 1905.

Art. 17. Disciplinary penalties shall consist of the following:

- (1) an oral warning;
- (2) a reprimand recorded in the service *dossier*;
- (3) the total or partial cancellation of annual leave on pay;
- (4) a delay in salary advancement not to exceed four years;
- (5) reduction in salary not to exceed one-twelfth;
- (6) demotion in class or grade;
- (7) suspension not to exceed six months;
- (8) outright dismissal.

Art. 18. Except for the powers conferred by the laws and ordinances upon the higher authorities with respect to certain categories of communal employees, the disciplinary penalties enumerated in the preceding article shall be inflicted by the mayor upon the recommendation

of the chief of service and after the application of the provisions of article 65 of the Law of 22 April 1905.

With the exception of an oral warning or a reprimand recorded in the service *dossier*, such penalties may be imposed only in accordance with the opinion of a disciplinary council, as provided by the Law of 12 March 1930 and the Ordinance of Public Administration of 23 July 1930, revised by that of 9 February 1932.

Art. 19. In case of a grave offense or an emergency, the mayor may pronounce the suspension of an employee prior to his appearance before the disciplinary council. If the penalty subsequently inflicted is neither dismissal nor suspension, the accused employee shall be entitled to full salary during the period of suspension. In case of provisional suspension, the mayor shall immediately notify the justice of the peace who, in conformance with the provisions of the Law of 12 March 1930, shall have the duty of presiding over the disciplinary council.

Art. 20. The opinion of the disciplinary council, along with the reasons therefor, shall be reproduced in the mayor's decision. This decision must be transmitted to the employee concerned by registered letter. If the penalty imposed be suspension, any provisional suspension under the terms of article 19 shall be counted as part of the period of official suspension.

#### *Transitional Provisions*

Art. 21. Employees in active service at the time the foregoing regulations are applied may by way of exception be granted permanent status without regard to age, examination, or probationary requirements, provided they have served more than two years and hold a position included on the list referred to in article 1.

# GERMANY

BY

FRITZ MORSTEIN MARX



### *The Author*

FRITZ MORSTEIN MARX received his education in Germany. In 1922 he took his doctorate at the University of Hamburg. He has studied German municipal government and administration at close range for several years. Research work led him also to other European countries. At one time he was a lecturer at the Administrative Academy in Hamburg. His academic career includes faculty positions at the Pennsylvania School of Social Work, New York University, and Princeton University. At present he is assistant professor of government at Harvard University. He has contributed to American and foreign periodicals. The latest of his books is *Government in the Third Reich*, published recently in a revised edition. He is the editor of the McGraw-Hill "Studies in Political Science." At Harvard his special fields are public administration, American and comparative, and state and local government. At present he is working on a volume to be entitled *Problems of Administrative Management*.

## Chapter III

### GERMANY

#### PART I. GERMAN LOCAL GOVERNMENT

Of all the factors contributing to the evolution of German political tradition, few have exerted deeper influence than have two centuries of civil service domination in the executive branch. There is perhaps only one other institution that deserves mention in the same breath: local self-government. Germany's "extremely long and continuous history of interest in administrative efficiency" has been taken as an "illustration of her political character."<sup>1</sup> But the prominent rôle played by local government up to our day suggests an equally noteworthy inclination to temper professionalized administration with representative institutions.

The cardinal problem of local government is ever-recurrent. It has two sides: first, how to enlist for government purposes civic energies that otherwise would remain dormant or seek outlets in obstruction; and second, how to avoid at the same time the emergence of a "state within the state." In this respect the status of local government is necessarily conditioned upon contemporaneous trends molding the attitude of the central authority. Conceivably, the policy of the central authority toward local autonomy may be one of stimulation, limitation, or elimination. With certain qualifications, one can say that in the course of German history local government has twice passed through the whole of this cycle.

#### *Sec. I. A Deep-Rooted Institution*

*Early splendor and decline.* The "Holy Roman Empire of the German Nation" was in a way the closest approximation of a "commonwealth of cities" that ever existed in Central Europe. Self-government

<sup>1</sup> Herman Finer, *The Theory and Practice of Modern Government* (London, 1932), vol. II, p. 1280.

of its manifold subdivisions gave the multipartite medieval state its peculiar shape. Imperial charters and privileges placed a considerable number of municipalities on a par with territorial rulers in the semi-parliamentary bodies of the Reich. The burghers enjoyed important immunities. Said the ancient adage: "City air makes free." Even at a time when the power of the crown began to wane, urban initiative remained unbroken.<sup>2</sup>

The cities were Germany's strongholds of wealth and the backbone of the empire's credit structure. In the south, trading centers such as Augsburg, with its house of Fugger, attracted the goods of the world. In the north, the Hanseatic League fought wars and made peace on its own terms, shrewdly promoting the commercial interests of its member cities. But as the stakes grew larger even the joining of forces in militant municipal federations could no longer offset the increasing decomposition of imperial strength. Moreover, discord reared its ugly head within the city walls. The urban patriciate controlling the municipal councils by virtue of a sharply restricted franchise found itself challenged by the unprivileged. At the close of the sixteenth century, city government was heading for a critical *impasse*. The Thirty Years' War (1618-1648) sealed its doom.

*The impact of absolutism.* The era of reconstruction, which in Brandenburg was initiated by the Great Elector, assigned to the municipalities a humbler rôle. Territorial dynasties, irked by the obstreperous tactics of the landed and urban gentry, looked upon city privileges as a barrier to political consolidation and effective planning. In the seventeenth and eighteenth centuries, absolutism, basing its unrivaled position upon administrative centralization and a broadly recruited civil service, began to permeate the local sphere. The Great Elector's grandson, King Frederick William I of Prussia, not only proved his organizing genius in developing the merit rule into a lasting buttress of public personnel policy. He also sanctioned in his municipal legislation an unprecedented measure of state penetration of local government.

Yet the encroachment was historically not without its blessing. It counteracted municipal introversion and simultaneously opened the city

<sup>2</sup> Perhaps one of the most impressive memorials of early municipal grandeur is Matthaeus Merian's "*anmüthige Städte-Chronik*"—published in 14 volumes under the title *Topographia Germaniae* (1642-1688).

hall gates widely to the meticulous administrative standards elaborated by Prussia's professional public service. In this experience primarily one must seek the explanation for the strong career tradition of the German municipal executive. It is, therefore, not surprising that as early as 1798 a Prussian administrator<sup>3</sup> envisaged a comprehensive scheme of inter-local transfers when recommending that the government draft for executive heads of small towns "the ablest clerks employed in middle-sized cities."

*The reforms of Baron vom Stein.* In England, the revival of local self-government in 1835 preceded the birth of the British civil service by almost a generation. In Germany, the Prussian Municipal Act (*Städteordnung*) of 1808 restoring "city freedom" was able to build on the firm foundation of a municipal service familiar with tested administrative techniques and guided by the sense of duty characteristic of Prussia's "enlightened monarchy." These assets had survived the period of political stagnation following Frederick the Great's death—a period during which his state rapidly deteriorated into a revered anachronism. When Prussia met military disaster at Napoleon's hands, Baron vom Stein and his closest associates in the ministerial bureaucracy were not slow to trace the breakdown to domestic causes. Within two years they inaugurated a far-reaching reform program by granting in the *Städteordnung*<sup>4</sup> ample powers of self-government to all municipalities in order to bridge the gulf between the state authorities and the citizenry and to mobilize the people in the cause of resuscitation.

Political representation in the modern sense thus made its first appearance in the city, four decades before Prussia received a constitution. In arranging its own house, local government won free scope,

<sup>3</sup> This recommendation is contained in K. F. Wiesiger's *Beantwortung der Frage: Wie können Magistratspersonen in mittleren und kleinen Städten den grössten Nutzen stiften?* (Zerbst, 1798). The book, written by a *Kurmärkischer Krieger- und Domainenkammer- und Justiz-Assessor* stationed at Treuenbriezen, is a remarkably competent manual of sound administrative practice for middle-sized and small municipalities. For a selection of excerpts cf. Fritz Morstein Marx, in *Public Management*, vol. 17 (1935), pp. 21 ff.

<sup>4</sup> It is perhaps worth mentioning that the *Städteordnung* utilized certain features of city government inherited from the municipal legislation of King Frederick William I and did not represent an abrupt break with the past, except for its insistence upon civic participation. Nor would it accord with historical facts to assume that the *Städteordnung* was the outgrowth of a great popular movement. Its sponsors were high administrative officers deeply conscious of their responsibilities and capable of rising to the heights of true statesmanship.

subject only to that degree of state supervision which a reasonably balanced system of administrative integration necessitated. A few years sufficed to prove the merits of Stein's bold step. Soon the Prussian legislation of 1808 became a widely recognized prototype of city government in other German states.

*The scope of autonomy.* As time went on, the municipality in fact acquired a wider range of autonomy in its proper domain than that possessed by local authorities in France and England. The elected councils of prewar times did not depend on special legislation for the power to establish and administer enterprises of a cultural, social, or economic nature—such as libraries, theaters, stadiums, transportation systems, water and gas works, power plants, or savings banks. The corporate character of the German municipality was commonly construed to imply, within the bounds of sound finance, unencumbered authorization to pursue the local interest as the city fathers saw fit (“universality rule”), while on the other hand they could be held accountable for failing to cope satisfactorily with the accepted minimum of municipal tasks. In addition, local governments were entrusted with the administration of state functions. In this field they served as the agents of state administration, subject to direct state control (duality of tasks).

On the whole, local government fulfilled, as a stanch Liberal has said, in many respects the same purposes as did constitutional safeguards of democracy in other countries.<sup>5</sup> It educated the people for governmental responsibility and served as a check against the menace of official self-seclusion, which in the end leads either to civic indifference or to violent outbursts.

*Local representation in the administrative organization of the states.* As a measure of political reform, Stein's Municipal Act aimed at popular consultation. The underlying thought could well be applied to the state's own field organization. In 1883 Prussia made another significant move by providing for the permanent participation of representatives of self-government in the immediate conduct of state administration. To this end, administrative committees, in which the majority of seats fell to locally elected delegates of the autonomous

<sup>5</sup> Fritz Fleiner, *Institutionen des Deutschen Verwaltungsrechts*, 8th ed. (Tübingen, 1928), p. 100.

bodies, were attached to the state's provincial, district, and county agencies.

Each committee was entrusted with the task of jointly deliberating with the directing field officials all matters of general importance coming up for decision in the respective areas of state administration. Here, then, local government found itself called upon to share responsibilities which hitherto had rested squarely upon the state's executive hierarchy in the provinces and their administrative subdivisions. For evidence of the benefits derived from this mergence of the layman's point of view and the professional outlook of Prussia's field service one need not search long. Not without reason did the German republic after 1919 make use of similar devices<sup>6</sup> in the expanding realm of national administration.

*War strain and the Weimar Constitution.* Russia's municipal dumas and zemstvo institutions suffered acutely from ruthless interferences and were looked upon with deep suspicion by the tsarist autocracy. German local government, on the other hand, operating under one of the most liberal forms of home rule, was recognized as a constructive force in the prewar *Kaiserreich*. Notwithstanding a relatively limited municipal suffrage, city management throughout the country had attained a world-wide reputation for efficiency, accomplishment, and sober budgeting.

Neither the organizational stress and the financial drain of the World War nor the collapse of 1918 could mar its record. It is true, freedom of local planning came practically to an end. But the national importance of effective local government had been demonstrated on the broadest scale, and local government had survived the crucial test. Under these circumstances, Weimar democracy confined itself to confirming the legal foundations of a cherished and deep-rooted institution when it safeguarded local government's autonomous status through explicit provision in the national constitution's bill of rights.

*Financial reorganization and the depression.* In another way, too, the nation and its local authorities were to establish closer contact with each other than had existed theretofore. The preservation of the federal

<sup>6</sup> For an illuminating survey cf. Gerhard Lassar, *Jahrbuch des öffentlichen Rechts*, vol. 14 (1926), pp. 1 ff.

form of government left the states the legislative and supervisory stewards of local autonomy. But under the new constitution the Reich obtained virtual supremacy in the field of taxation. As a consequence, the lion's share of public revenues was thenceforth to be administered nationally. From the funds thus raised, the Reich Treasury assigned to the state governments annual allotments according to a statutory distribution formula. Of these allotments, local authorities received defined amounts on the basis of intrastate arrangements.<sup>7</sup> Apart from the allotments, state and local governments had to rely on those taxes remaining at their own disposal.

On the whole, the sums allotted nationally represented a fair compensation for the loss in taxing prerogatives encountered by state and local governments. But although considerations of national policy seemed to leave no practicable alternative, the resulting fiscal tie-up with national finances did not prove an unmixed blessing for local government. Years passed before the Reich, itself in a tight corner, was ready to adjust the allotments to the staggering depression-load of local relief expenditures. In this predicament, local authorities reaped greater benefits than ever before from the services of their own nationwide coöperative organizations,<sup>8</sup> which from well-staffed headquarters in Berlin tirelessly and ably presented the case for revision to the national government, broadcast the plight of their constituent bodies through the media of public opinion, and circularized sound advice among all units of local government.

*National Socialist legislation.* Caught in the swirl of an economic catastrophe and at the same time challenged by the display of national initiative called forth by the very extent of the débâcle, local self-government saw itself reduced to the discouraging task of emergency retrenchment. Nothing could be more loathsome for the elected councils—now thoroughly democratized, but at the same time soaked in the same acid political factionalism which during the republican period

<sup>7</sup> On the evolution of financial relationships between central and local governments cf. Mabel Newcomer, in *Political Science Quarterly*, vol. 51 (1936), pp. 185 ff.; and the same author's *Central and Local Finance in Germany and England* (New York, 1937).

<sup>8</sup> These "roof" organizations were the Assembly of German Cities, the Union of Towns, the Federation of Counties, and the Association of Rural Communities.



prevailed in the national parliament. Meanwhile the Reich put the screws on local finances and practically assumed control over the bonded indebtedness of all public bodies. In the end, the hard and fast rule of central governance and grim necessity seemed to have made autonomy "almost extinct."<sup>9</sup> What was left of it had been retained through the wariness of the professional elements in the local civil service rather than through the fortitude of the representative organs of self-government.<sup>10</sup>

This precarious situation alone placed local government at the mercy of National Socialist "totalitarianism." The First Coördination Act of the Hitler cabinet, reconstituting all elected councils so as to insure everywhere a majority for the new "united national front," was widely considered the initial step toward local government's complete annihilation. But the tide was to turn. In December, 1933, another cabinet act supplied a legal basis for the amalgamation of the existing national organizations of local government into an all-embracing and politically catholic clearing house: the Assembly of German Local Authorities (*Deutscher Gemeindetag*) interlocked with the top set-up of the National Socialist Party. The act subjected the assembly to the supervision of the National Minister of the Interior and took considerable care to keep the promotional activity of the assembly within bounds. Even so, however, the act suggested intentions pointing to a conservation of a modified home rule. The subsequent German Municipal Act (*Deutsche Gemeindeordnung*), reorganizing German local government on a national scale, reënforced this optimism. Promulgated early in 1935 as a "basic law of the National Socialist state," this act invokes in its preamble the "true spirit of Baron vom Stein."<sup>11</sup>

<sup>9</sup> Roger H. Wells, *German Cities* (Princeton, 1932), p. 13. This book is a thoughtful and eminently informative study of municipal government and administration under the Weimar constitution. It is equally useful as an introduction to current problems of local government in the Third Reich.

<sup>10</sup> Arnold Köttgen, *Die Krise der kommunalen Selbstverwaltung* (Tübingen, 1931), p. 34.

<sup>11</sup> For a sketch of the act of December, 1933, cf. Fritz Morstein Marx, in *National Municipal Review*, vol. 23 (1934), pp. 255 ff. The *Gemeindeordnung* itself appears in translation on pp. 277 ff., below. An earlier translation by Professor James K. Pollock appeared in William E. Rappard, et al., *Source Book on European Governments*, New York, 1937, IV, pp. 34-65.

*Sec. 2. The Units of Local Government*

A study of national governmental organization requires close analysis of the apex of the pyramid of power. Local autonomy reveals its salient features at its very base. The primary unit of German self-government also outranks all others numerically; it is the *Gemeinde*.

*The Gemeinde.* If one would add up the square miles covered by the 50,163 *Gemeinden* existing in 1937, the grand total would practically correspond with the territory encompassed by the German Reich. The term *Gemeinde* is widely inclusive. It applies to hamlets as well as metropolitan communities. The German Municipal Act of 1935, addressing itself to all *Gemeinden*, discarded the former organizational distinction between cities (*Städte, Stadtgemeinden*) and rural communities (*Landgemeinden*). The new law—ushering in a national régime of local government supervision and setting aside the entire body of previous state statutes on the subject—gives detailed provisions relative to structure, powers, and responsibilities of the basic unit of self-government irrespective of its size. A classification of the *Gemeinden* according to area or population has, therefore, only statistical significance. In the official statistics, the category *Landgemeinde* extends to all primary units having a population of less than 2,000 inhabitants, regardless of social or occupational complexion. More than 90 per cent of all *Gemeinden* fall into this category. Almost one-third of the total population live in *Landgemeinden*.

Grouped on the basis of their population the primary units of local government show considerable diversity. In 1937 the number of *Landgemeinden* amounted to 46,573 as contrasted with 3,590 units with a larger population. Of this latter class, not less than 2,321 *Gemeinden* had a population of below 5,000; 996 surpassed this limit, but did not reach the 20,000 mark; 220 could boast of 20,000 or more inhabitants though failing to measure up to 100,000; and 53 placed themselves in the statistical top group of "large cities" having a population of 100,000 or more. In 1933 the "large cities" held 30.4 per cent of the total population, as against 30.1 per cent in 1925.

*Tendency toward larger and fewer units.* German cities of more than 50,000 inhabitants as a group have lately experienced a noticeable, though by no means heavy, loss of population owing to a partial re-

versal of migratory trends. But a comparison of statistical figures over a period of some ten years (Table I) discloses a steady increase of the "large cities." Equally significant is the pace of urban concentration revealed by the constant swelling of the classes of middle-sized and small cities, leaving the *Landgemeinden* alone in a losing position. The rôle played by annexation in this development is relatively small. Nor have rural consolidations been numerous enough to blur the picture. Moreover, the figures given in Table I omit all reference to the former manorial precincts in Prussia abolished by the act of December, 1927.<sup>12</sup> The manorial precincts, remnants of the age of feudalism, were not *Gemeinden* because they lacked representative organs, the lord of the manor exercising the powers of local government as owner of the manorial estate. The elimination of the almost 12,000 manorial precincts was the only house-cleaning measure worth the name which the republican era witnessed.

TABLE I<sup>13</sup>

## NUMBERS AND POPULATION OF THE GEMEINDEN

<i>Gemeinden with a Population of</i>	1925 <sup>14</sup>	1934 <sup>15</sup>	1937 <sup>16</sup>
less than 2,000 .....	48,272	47,116	46,573
2,000 to 4,999 .....	2,247	2,289	2,321
5,000 to 19,999 .....	920	966	996
20,000 to 99,999 .....	216	211	220
100,000 or more .....	45	52	53
Total.....	51,700	50,634	50,163

<sup>12</sup> Act of December 27, 1927 (*Preussische Gesetzssammlung*, p. 213). On rural government cf. J. Bickel, *Verwaltung und Wirtschaft der Landgemeinden* (Berlin and Stuttgart, 1937).

<sup>13</sup> Although the former manorial precincts in Prussia are excluded from this tabulation, it may be noted that they are included in the official Prussian statistics as "local units," and thus appear also in the computations of the National Statistical Bureau.

<sup>14</sup> *Statistisches Jahrbuch für das Deutsche Reich*, vol. 48 (Berlin, 1929), pp. 8-9. In contrast with Table I, the official statistics include 11,856 manorial precincts in the classification *Gemeinden*; cf. *Statistisches Jahrbuch für den Freistaat Preussen*, vol. 25 (Berlin, 1929), pp. 14-15; and vol. 26 (Berlin, 1930), pp. 14-15.

<sup>15</sup> *Statistisches Jahrbuch für das Deutsche Reich*, vol. 53 (Berlin, 1934), p. 11. In contrast with Table I, the official statistics include 247 (not yet dissolved) manorial precincts; cf. *Statistisches Jahrbuch für den Freistaat Preussen*, vol. 30 (Berlin, 1934), pp. 10-11.

<sup>16</sup> *Statistisches Jahrbuch für das Deutsche Reich*, vol. 56 (Berlin, 1937), p. 14. For the purpose of Table I it has been assumed that the number of manorial precincts

Leaving aside the disappearance of the manorial precincts, the fact remains that the number of basic units of local government is falling off. In a little over ten years it has shrunk from 51,700 to 50,163. But whereas the *Landgemeinden* show a decrease of 1,699, the figures for the larger units demonstrate a gain of 162. Organizationally, then, as well as in terms of fluctuating population, the trend on the whole is toward the larger unit.

*Redistricting.* From an administrative point of view, there is much reason to welcome such a tendency. In fact, the Municipal Act of 1935 itself stresses the patent necessity of reconsidering the territorial basis of primary units in the light of modern needs. While the new law does not lay down any minimum requirements or standards for the *Gemeinde* area, and for the time being in this respect perpetuates the *status quo*, it supplies effective procedural facilities for the adjustment of local borders. The goal is to insure on the one hand a high degree of social cohesion within the community, and on the other to safeguard the unit's capacity of fulfilling its governmental functions.

The power to decree territorial reorganizations rests with national authorities. Thus boundaries may be changed without the delay of years of inter-local feuds; inadequate units can be abolished, partitioned, or combined to form a new *Gemeinde*. The most important redistricting transaction of the past two years, however, was effectuated independently of the provisions of the Municipal Act. In January, 1937, a special cabinet Act<sup>17</sup> incorporated the Prussian cities of Altona, Harburg-Wilhelmsburg, and Wandsbek into the city of Hamburg, thus relegating the long-debated metropolitan problem of Greater Hamburg to the rank of one of internal municipal organization.

*Greater Hamburg.* The act divests Hamburg of statehood and at the same time places the enlarged municipality under the direct supervision of the National Minister of the Interior. Two middle-sized cities belonging to the former Hamburg state territory have been transferred to Prussia. Among them is Cuxhaven, important for its trans-

included in the official statistics has remained the same as it was for 1934. With the inclusion of Austria and Sudetenland the total number of *Gemeinden* has risen to about 57,000.

<sup>17</sup> Act of January 26, 1937 (*Reichsgesetzblatt*, I, p. 91). See also Gerhard Krebs, in *American Political Science Review*, vol. 32 (1938), pp. 536 ff., and Harry von Rozycki, *Die Neugestaltung Hamburgs* (Hamburg, 1938).

oceanic harbor facilities and its fish industry. The act also terminates the statehood of Lübeck, which has become a Prussian city-county. Hamburg, as a Reich city in a new sense, occupies a dual position as a municipality and a district of national administration as well. The entire metropolitan complex is placed under one single government, without being subdivided into boroughs or other municipal districts maintaining a measure of autonomy. Such a subdivision may, however, be adopted in the basic ordinance (charter). The national governor for Hamburg combines in his person the functions of mayor and of chief officer of the national administrative district. The city executive is to be advised by 45 municipal councillors (*Ratsherren*). The present law is intended to be merely a transitional regulation.

*Urbanization and the family structure.* In the light of the "blood and soil" doctrine, National Socialism has seen no reason to rejoice at the growth of urbanization. The birthrate record of the larger cities is disproportionately low. Similarly disconcerting is the small percentage of urban family households with more than four members.

TABLE 2  
SIZE OF FAMILIES IN THE GEMEINDEN <sup>18</sup>

<i>Gemeinden with a population of</i>	<i>Percentage of family households having</i>		
	<i>2 members</i>	<i>3 or 4 members</i>	<i>5 or more members</i>
more than 500,000 .....	29.1	52.3	18.6
200,000 to 500,000 .....	27.2	52.7	20.1
100,000 to 200,000 .....	26.2	51.7	22.1
50,000 to 100,000 .....	26.0	51.2	22.8
20,000 to 50,000 .....	25.8	50.9	23.3
15,000 to 20,000 .....	25.6	50.7	23.7
10,000 to 15,000 .....	24.3	50.4	25.3
Total .....	28.3	51.6	20.1

As Table 2 indicates, taking all classes of *Gemeinden* with a population of above 10,000, the average percentage of family households having five or more members exceeds one-fifth by a slim margin. For Berlin alone the corresponding figure is in fact as low as 12.0 per cent, while the share of family households with only two members amounts to 36.6 per cent.

<sup>18</sup> This tabulation is based on the census of 1933. The Saar is not included.

Supplementing the novel national policy of family subsidies and government marriage loans, local authorities in the Third Reich have been inspired both to ease the lot of larger families and to create inducements in various ways. The city of Chemnitz, for instance, cut the water rate 20 per cent for dwellings inhabited by tenants with more than three children below the age of 16—a measure comparable with the policy of French municipalities, which grant, under similar circumstances, reductions of gas and electricity rates. The city of Dresden has set up a fund from which part of the rent for families of this size can be covered. In 1937 the city of Wuppertal celebrated the birthday of the Leader and Reich Chancellor by raising the special weekly allowance of municipal workmen who are family breadwinners to 4 *Reichsmark* for each child.

*The "Oldenburg Plan."* But National Socialism's deep-seated misgivings toward urbanism have expressed themselves also in terms of local government reform. In 1933 the state government of Oldenburg undertook a large-scale experiment in rural consolidation by creating *Grossgemeinden*—larger areas combining a varying number of separate settlements under one rural government but preserving their agrarian basis.<sup>19</sup> Whether or not the "Oldenburg Plan" will satisfy administrative and other needs is a matter of conjecture. Suffice it to say that it has provoked a lively public discussion among local administrators, academicians, and planners.

*The county.* Although the Municipal Act of 1935 contains virtually uniform provisions for large and small *Gemeinden* alike, thus rendering any fundamental legal differentiation between cities and *Landgemeinden* obsolete, it recognizes specifically the status of city-counties (*Stadtkreise*). As a rule, all primary units of self-government are at the same time integral parts of another set of autonomous bodies: the counties. Urban communities outgrowing the style of county administration may, however, be freed entirely from the county nexus by elevation to the rank of separate "city-counties." In contradistinction to the city-counties (*Stadtkreise*) all other counties may be classified—and in fact in Prussia and Thuringia are explicitly designated—as

<sup>19</sup> Cf. the memorandum prepared by two administrative officers of the Oldenburg government: Theilen and Carstens, *Die oldenburgische Verwaltungsreform vom Jahre 1933* (Oldenburg, 1934).

rural counties (*Landkreise*). Of the latter category, there were in 1936 altogether 715, of which slightly more than one-half belonged to Prussia, nearly one-fourth to Bavaria, and the others to the remaining German states.<sup>20</sup>

The administrative reorganization to be expected as a consequence of the establishment of the German unitary state will in all probability affect the present county pattern substantially. Not only may one anticipate many territorial exchanges and even county mergers, but imminent is also the adoption of a national county law as a counterpart to the *Deutsche Gemeindeordnung*, which concerns itself, as stated above, only with the primary units of local government including those having also a county status (*Stadtkreise*). Drafts for a German County Act (*Deutsche Kreisordnung*) are at present being worked out in the central departments.

Aside from the city-counties (*Stadtkreise*), the county is the intermediate unit of German local government, discharging primarily those functions with which the small cities, villages, and rural dwarf communities belonging to it would individually not be able to cope adequately.

*The Amt.* Another intermediate unit, which exists, however, only in certain parts of Prussia (Rhine Province, Westphalia, and Schleswig-Holstein), is the *Amt*. This is a self-governing unit admin-

<sup>20</sup> The Saar is not included.

*Beigeordneter* Dr. Harry Goetz, of the Institute for Municipal Research at the University of Berlin (*Kommunalwissenschaftliches Institut an der Universität Berlin*), has kindly supplied me with a more recent compilation giving a slightly lower total though including the Saar (letter of May 19, 1937). His figures are:

Prussia— <i>Landkreis</i> .....	361
Bavaria— <i>Bezirk</i> .....	156
Saxony— <i>Bezirksverband</i> .....	27
Württemberg— <i>Kreisverband</i> .....	61
Baden— <i>Bezirkswohnungs- und Fürsorgewerband</i> .....	40
Hesse— <i>Kreis</i> .....	18
Thuringia— <i>Landkreis</i> .....	15
Mecklenburg— <i>Kreis</i> .....	11
Oldenburg— <i>Amtsverband</i> .....	6
Brunswick— <i>Kreisgemeindeverband</i> .....	7
Saar (district)— <i>Kreis</i> .....	7
Total .....	709

Cf. also Kurt Jeserich, *Die deutschen Landkreise, Material zur Landkreisreform* (Stuttgart and Berlin, 1937).



istering most of the common affairs of a number of hamlets with adjoining areas, though leaving the constituent units otherwise in the position of full-fledged *Landgemeinden*. It is conceivable that in one way or another the *Amt* will be carried over into the future County Act, unless the days for the diminutive type of *Landgemeinden* are numbered. The recent passage by the Prussian government of a revised

TABLE 3<sup>21</sup>

## JOINT AUTHORITIES FOR SPECIAL PURPOSES

<i>Functional purpose</i>	<i>Number</i>
Schools .....	9,429
Public welfare .....	232
Public health .....	957
Cemeteries .....	461
Fire .....	1,933
Agriculture .....	630
Roads .....	261
Water .....	353
Gas .....	26
Electricity .....	87
Other .....	737
Total.....	15,106

*Amtordnung*<sup>22</sup> seems to indicate that the *Amt* régime is considered a solution superior to a governmental consolidation which may fail to produce a real community spirit. For in Germany, too, the sense of autonomy is particularly intense in the small rural units.

*The joint authority.* This explains to some extent the favor enjoyed by joint administrative authorities, particularly among *Gemeinden* with less than 500 inhabitants. Joint administrative authorities are *ad hoc* bodies formed by units of local government for specific purposes (*Zweckverbände*). No special legislation is required for the establishment of a *Zweckverband*.<sup>23</sup> In contrast with the county and *Amt*

<sup>21</sup> *Vierteljahrshefte zur Statistik des Deutschen Reichs*, vol. 44 (Berlin, 1936), I, pp. 202 ff.

<sup>22</sup> *Amtordnung* of October 8, 1934 (*Preussische Gesetzsammlung*, p. 393).

<sup>23</sup> In some cases, however, *Zweckverbände* have been organized by national legislation, for instance, the *Siedlungsverband Ruhrkohlenbezirk* (1920) and the *Reichsparteitag Nürnberg* (1935). The latter, however, serves national purposes by financing the construction and other expenditures incurred through the holding of the

organizations, membership in a joint administrative authority, as a matter of principle, is left to the decision of the individual *Gemeinde*. According to the most recent figures available (Table 3), the total number of joint administrative authorities composed at least primarily of *Gemeinden* is 15,106, of which Prussia's share is 8,704. Of the total, 7,829 are made up either exclusively or predominantly of *Gemeinden* having a population of up to 500; of the remaining joint authorities, close to one-fourth (3,416) service mostly *Gemeinden* with from 500 to 1,000 inhabitants. More than three-fifths of all joint authorities devote themselves to the problems of school administration.

In view of the wide spread of municipal ownership of utilities in Germany, the figures for water, gas, and electricity works jointly controlled (353, 26, and 87, respectively) must appear exceptionally low. The explanation lies partly in the size of the constituent local bodies, partly in the fact that until recently most of these establishments, though municipal enterprises, operated technically in the form of private corporations (*Aktiengesellschaft* or *Gesellschaft mit beschränkter Haftung*). As such, they stood legally outside the realm of public administration. In the Third Reich, the general aversion to "corporate anonymity" has brought about a movement back to the "departmentalization" of municipally-owned utilities, which may cause the creation of further joint water, gas, and power authorities.

The administrative importance of the *Zweckverbände*<sup>24</sup> as an insurance of efficient management is self-evident. *Viribus unitis* even the smaller rural units have been able to guarantee services which would exceed the capacity of each of them singly. What remains to be done is the passage of a uniform National Joint Authorities Act, which has so far merely reached the draft stage. Joining of forces has also proved advantageous in other spheres, such as the administration of the national public assistance law providing for the erection of welfare unions (*Fürsorgeverbände*) in the several states. As a rule, the tasks of the district *Fürsorgeverbände* have been allocated to the counties (including the city-counties—as one-unit welfare unions).

annual congresses of the National Socialist Party; the only local unit belonging to it is the city of Nuremberg.

<sup>24</sup> For further information on the organization and the activities of the *Zweckverbände* cf. Wells, *op. cit.*, pp. 187 ff.; Friedrich Schöne, *Jahrbuch für Kommunalwissenschaft*, vol. 3, I (1936), pp. 13 ff.

*The province.* Capping the set-up of German local government, and being at the same time the largest autonomous unit in point of area, is the province, of which Prussia has thirteen. The Prussian province<sup>25</sup> attends to regional needs. In the field of public welfare, its chief responsibilities concern the institutional care of the insane, the deaf and dumb, the blind, and the crippled. The promotion of agriculture through training facilities and public works has always been one of its special functions, provincial highways another. Under a recent decree of the Leader and Reich Chancellor,<sup>26</sup> the provinces will also assume a prominent rôle in the regional accommodation of national planning. Finally, mention may be made of the provincial appropriations expended for theatrical and musical programs, museums, archives, and research,

### *Sec. 3. The Organization of Local Government*

*The new principles.* The outstanding peculiarities of German local government in the Third Reich are two: first, the concentration of all responsibility in the person of the executive head of each unit (leadership principle); and second, the assignment to all autonomous bodies of especially authorized agents of the National Socialist Party, which by "cabinet act" has become the sole lawful political organization of the German people and consequently claims to be the only representative element in the new unitary state. Both these features are without precedent in the legislation of that era launched by Stein with the adoption of the *Städteordnung*. Nor can it be said that they have grown organically from the practical experience of local authorities. Instead, they owe their existence to the authoritarian dogma and the totalitarian objectives of the National Socialist Party. Are they compatible with each other?

<sup>25</sup> An instructive analysis of the Prussian province as a governmental and administrative unit is to be found in Kurt Jeserich, *Die preussischen Provinzen* (Berlin, 1931). Cf. also Karl F. Kolbow, *Die Kulturpflege der preussischen Provinzen* (Stuttgart, 1937).

<sup>26</sup> Decree of December 18, 1935 (*Reichsgesetzblatt*, I, p. 1515). This decree lays the foundation for a nationally integrated system of planning authorities. On transportation planning see Sven Helander, *Nationale Verkehrsplanung* (Jena, 1937). On metropolitan planning cf. Martin Pfannschmidt, *Die Industriesiedlung in Berlin und in der Mark Brandenburg* (Stuttgart and Berlin, 1937).

*The party delegate.* The *Deutsche Gemeindeordnung* attempts a neat "compromise"<sup>27</sup> between essentially conflicting tendencies—accountable municipal management on the one hand and political superintendence of local government by party agencies on the other. The powers of the "party delegate"—one officiating for every primary unit—are laid down in concise clauses. He is to be the only official spokesman for the National Socialist Party in the affairs of the *Gemeinde*—a watchdog of political righteousness who, moreover, may bark and bite only on defined occasions. All supervisory powers over the conduct of local government have remained with the higher administrative authorities. The law expressly warns other agencies not to tamper with municipal departments, whose officers are answerable to the mayor alone.

Being the agent of the National Socialist Party, the party delegate holds no local office himself. He receives his appointment from the Substitute of the Leader, circumspect Rudolf Hess, whose position is confined to party matters, but who has also jurisdiction over the manifold contacts between the party and the whole government machinery. Although unrestricted in his appointive discretion, the Substitute of the Leader has so far followed the rule of drafting as delegates the heads of the party's regional, district, and local organizations. Several decrees<sup>28</sup> issued by him elaborate in considerable detail their novel functions in the sphere of self-government.

Of these the most important concern the selection of the directing local officials and the council personnel. As to the directing local officials—the mayor and his ranking collaborators in charge of the various branches of administration (*Beigeordnete*)—the party delegate is limited to the right of nomination. This right is qualified in two ways. First, in so far as the vacancy is to be filled by a salaried official, the established practice of advertising the position and inviting applications from qualified candidates must be observed. The list of applications serves as a basis for the final choice. Second, before making his nominations the delegate is directed to consult the members of the council, and in case of a *Beigeordneter* confer with the mayor.

He then submits the names of those emerging as top candidates

<sup>27</sup> Roger H. Wells, in *American Political Science Review*, vol. 29 (1935), p. 655.

<sup>28</sup> As yet no less than 9 such decrees have been passed.

to the supervisory authority,<sup>29</sup> which may either confirm one of the choices or refuse to approve any of them. The first-mentioned alternative results in the candidate's appointment by the *Gemeinde*, the other in a repetition of the nominating process. Should again none of the new nominations prove satisfactory to the supervisory authority, the latter is entitled to take the initiative by indicating the candidate of its own preference, who must be appointed. In this way obvious cases of political favoritism on the part of the delegate or of misplaced confidence in a candidate's fitness can be remedied—unless influential party officers put the supervisory authority itself under pressure. It should also be clear that in appraising competence weight is given to the political record of the aspirant. Nevertheless, the professional standards of the permanent personnel in the supervisory authorities represent a check upon partisan forces which should not be underrated. The law assumes this check to be operative.

*The council.* A freer option exists for the party delegate in the recruitment of council members (councillors). As a consequence of the introduction of the leadership principle, the former system of public elections has fallen into oblivion. The alternative evolved by the Municipal Act aspires to a modification of the representative idea within the framework of the one-party state. According to the intentions of the law, the councillors, though called into office by the party delegate, are to act neither as his municipal lieutenants nor as an assembly of "yes-men." To this end, the delegate is placed under the legal obligation of inquiring into not only the political orthodoxy, but also the general qualifications and reputation of those under consideration for appointment. In addition, he is expected to examine the availability of citizens contributing through their work to the shaping of the social character of the *Gemeinde* or otherwise playing an influential rôle in the life of the community. Finally, before councillors are chosen the delegate has to seek agreement with the mayor.

The precedent—set by the Prussian *Gemeindeverfassungsgesetz* passed in December, 1933<sup>30</sup>—of reserving for holders of certain party

<sup>29</sup> For larger *Gemeinden* the law reserves the ultimate decision for the higher supervisory authorities; in the case of cities with more than 100,000 inhabitants for the Minister of the Interior.

<sup>30</sup> *Gemeindeverfassungsgesetz* of December 15, 1933 (*Preussische Gesetzsammlung*, p. 427).

positions council seats *ex officio* has not been followed by the Municipal Act. This device has consequently lost practical significance altogether since the *Deutsche Gemeindeordnung* has superseded the Prussian legislation. It is not the business of the party delegate to attend the regular meetings of the council. The executive decree of 1935<sup>31</sup> elaborating the provisions of the Municipal Act (*Ausführungsanweisung*) makes it, moreover, clear that the delegate is not meant to become the mayor's official shadow or his administrative conscience.

*The mayor.* According to explicit legal provision, the mayor (*Bürgermeister*) is the official representative of the community. All governmental authority is combined in his office, but he has the duty of discussing important measures prior to their enactment with the councillors. This applies among other matters to the adoption of ordinances. He is the lawful superior of the municipal personnel including the *Beigeordnete*. Save for the latter (and the councillors), he has full power of appointment and dismissal—subject, however, to the provisions of the civil service law. To give substance to the leadership principle, salaried mayors hold office for twelve years with the expectancy of reappointment. If the mayor's position is unpaid, his term is six years. The same applies to *Beigeordnete*. In *Gemeinden* having a population of more than 10,000, either the mayor or at least a *Beigeordneter* must be a full-time (salaried) official.

For city-counties the additional qualification exists that the mayor or his deputy (the senior *Beigeordneter*) must possess the professional training prescribed for the judicial or the higher civil service career.<sup>32</sup> All other directing local officials may be unpaid and perform their services as an honorary civic duty. In practice, however, the extent of salaried positions goes beyond the statutory minimum. The emphasis placed on executive permanency and professional safeguards reveals a salutary tendency to stem the tide of spoils, which is one of the inevitable concomitants of revolutionary overthrow. Much credit for these provisions must go to the staff of experts in the Assembly of German Local Authorities, mostly taken over from the headquarters of the

<sup>31</sup> *Ministerialblatt für die Innere Verwaltung*, p. 442.

<sup>32</sup> For a discussion of these training schemes, cf. Fritz Morstein Marx, *Civil Service in Germany*, Monograph 5, Commission of Inquiry on Public Service Personnel, *Civil Service Abroad* (New York and London, 1935), pp. 200 ff. See also below, pp. 266 ff.

earlier national organizations of local government, particularly the former Assembly of German Cities.<sup>33</sup> Their semi-official drafts for a German Municipal Act prepared in previous years have strongly influenced the *Deutsche Gemeindeordnung*.

*Standards of management.* Perhaps the most sharply marked trend of the past four years has been in fact the gradually rising pressure for a return to sound municipal management. The patent need for economy and the enlistment of local government for purposes of the Four-Year Plan has made even ranking National Socialists aware of the fact that political meddling with the conduct of municipal administration steps up public expenditures—be it merely through its disorganizing effects, or be it through the ensuing extravagance of outlay. At the 1936 Congress of the National Socialist Party, Dr. Wilhelm Frick, Reich Minister of the Interior, pointed to the grave consequences of attempts on the part of political missionaries to influence “correctively” municipal departments. Such a procedure, he declared, would not only undermine the leadership principle, but also put an end to all real control of local government. The admonition itself throws light on some of the practical difficulties with which the new law has to contend. At the same time, however, it is an interesting illustration of the present official attitude.

In this situation the personal responsibility of the leading executive officers in the *Gemeinden* for the unimpaired realization of the purposes of the Municipal Act is particularly great. To say that they are all fully conscious of their pivotal position would be a stark exaggeration. But most of the professionally trained municipal administrators—though

<sup>33</sup> Cf. *supra*, note 8. For further information on the organization and activities of the former Assembly of German Cities, whose great tradition is now being carried on by the Assembly of German Local Authorities, cf. Wells, *op. cit.* (*supra*, note 9), pp. 3 ff., 30 ff.; Charles E. Merriam, in *Public Management*, vol. 13 (1931), pp. 125 ff.; Fritz Morstein Marx, in *State Government*, vol. 4, no. 5 (1931), pp. 11 ff. Mention may be made of the invaluable statistical material compiled for many years by the Assembly of German Cities; these services are being continued by the new “roof” organization of German local government, particularly by the publication of the annual *Statistisches Jahrbuch Deutscher Gemeinden*, of which the 31st volume appeared in 1936 (Jena). Another equally useful periodical, devoted to the conduct of local government, is *Der Gemeindetag*, the house organ of the Assembly of German Local Authorities. A standard source, sponsored jointly by the Assembly and the Institute for Municipal Research at the University of Berlin, is the annual *Jahrbuch für Kommunalwissenschaft*, edited by Dr. Kurt Jeserich, which has appeared (in two parts for each year) since 1934 (Stuttgart and Berlin).



now almost without exception organized National Socialists themselves and very often new to their present top positions—have shown greater steadfastness and a firmer sense of governmental integrity than freely promoted party workers. Competence is, therefore, valued for more than one reason. Wherever the size of the community justifies a salaried (full-time) mayor, it is indispensable, in the words of an authoritative German critic, that he have a “solid professional training” and be as fully “informed about the currents of opinion in the citizenry, inadequacies and grievances”<sup>34</sup> as any “small Hitler” in the community might claim to be.

*Council meetings.* If the strict party affiliation of the elected council members threatened to make a farce of the representative principle under the reign of Weimar democracy, the enlistment of the National Socialist Party as an improvement over organized pluralism has obviously presented local government with kindred problems. It invites thought that the demand of the day is relief from unwelcome and irresponsible party pressure. That no similar complaints are being aired about the council personnel is hardly surprising. Though serving for a term of six years, they have no voting (and thus no withholding) powers and meet only at the discretion of the mayor. He must, however, avail himself of the advice of the councillors on all consequential subjects.

To combat council acquiescence, the Municipal Act imposes two specific duties upon each councillor. First, if the mayor so demands, the individual councillors must speak their minds; no one can go into hiding. Second, whenever a councillor finds himself unable to accept the mayor's point of view or suggested course of action, he is obligated to say so and have his dissent recorded in the proceedings. The Prussian *Gemeindeverfassungsgesetz* carried its horror of “municipal parliamentarism” so far as to prohibit the habit of talking to the gallery by allowing only secret council meetings. This injunction has found no place in the Municipal Act. In practice, however, secret meetings have remained the rule rather than become the exception. Here, then, another menace has arisen to that “special bond of confidence between the citizenry and local authorities which is conceptually and organically

<sup>34</sup> Leo Hilberath, *Jahrbuch für Kommunalwissenschaft*, vol. 3, II (1936), p. 214.

presupposed in the idea of self-government," as one of Germany's great mayors, now no longer active, has recently put it.<sup>35</sup>

*Discussion of local affairs.* "Nothing is better suited," he observed in a public statement attracting wide attention, "to make justified and unjustified criticism sprout like weeds than secret doings. Nothing has a more liberating, conciliating, and purifying effect than complete frankness if supported by decency of character. Sincerity and candor oriented toward truth and the common good, disinclined to mention personal accomplishment, and inspired solely by the will to serve the whole community—these are the noblest traits that can find expression in the sphere of public administration."

From such broad principles spring eminently practical formulae. "The councillors," he continued, "must hold a public meeting at least once every four weeks, and here begins the work of the press. If the session is conducted merely on the basis of an oral announcement of the order of the day, and if no reports are given, even the best newspaper account will fail to stir the interest of the public. The response will be somewhat greater if at least the mayor and his *Beigeordnete* introduce the different topics of the agenda by comprehensive surveys of the situation. But it will soon become evident that administrative reports alone do not particularly attract the attention of the public and make for a larger audience. The interest of the citizenry can be fostered and permanently kept alive only by a real spark, and this real spark is—free opinion. As long and in so far as the public remains under the impression that the men sitting there do not state their own views, but act in line with a preconceived or even superimposed notion, there will be no genuine interest in the work of the councillors."<sup>36</sup> Can one wish for a more concise summary of one of the most pressing problems of contemporary German self-government? But on the other

<sup>35</sup> Dr. Karl Goerdeler, *Frankfurter Zeitung*, nos. 424-425, August 20, 1936. It is a distressing comment on the complexities confronting today the work of many German municipal administrators that Dr. Goerdeler, who twice served as National Price Commissioner for the Reich cabinet, should have felt impelled early in 1937 to part from his long-time position as *Oberbürgermeister* of the city of Leipzig. The circumstances of his resignation are reminiscent of those leading two years earlier to the withdrawal from municipal life of an equally distinguished mayor—Dr. Heinrich Sahm, *Oberbürgermeister* of Berlin. Dr. Sahm serves now as German ambassador in an important Scandinavian capital.

<sup>36</sup> *Ibid.*

hand, is not this very train of thought—under prevailing conditions—remarkable evidence of a strong desire to overcome current evils and to revitalize autonomy?

*"Indifference and resignation."* Similar manifestations of the spirit of self-criticism and wakefulness have come from other quarters. In the German *Yearbook for Municipal Science*,<sup>37</sup> the chronicler for 1936 comes out with stern advice for mayors. "No mayor," we read, "will reach the goal of close contact with the citizens by simply dictating from his desk; if he follows a different course and stimulates their interest he will also be able to avoid wrong measures and at the same time create for himself a valuable organ of control. All local administrators who have recently expressed themselves on these questions are agreed on the necessity of holding more frequent public meetings of the councillors than was the rule before, so that indifference and resignation on the part of the public can be forestalled."<sup>38</sup> The public, too, has not remained mute. The editors of the 1937 Carnival Number of the *Münchener Neueste Nachrichten*, for instance, knew of no more poignant joke for the local news section of their tartly jesting sheet than a clever concoction headlined "City Council Meetings Public Again—Throngs Rush to City Hall."

But open sessions and free debate in council chambers are not the only means by which the citizenry may be shaken out of its "resignation." In several places municipal authorities have taken the initiative in organizing *Kommunalpolitische Abende*, informal public evening gatherings where mayor and *Beigeordnete* render account of their work and take up questions and proposals from the floor. Pained by the prospect of becoming a civic wallflower, German local government has assumed the lead in arranging house parties. Whether the broader issue can really be met in this way appears doubtful.

*Administrative organization.* The administrative set-up of the *Gemeinde* has remained largely as it was before the National Revolution. Except in the smaller rural communities, a detailed departmental division of labor following a rational pattern is the common standard. The various municipal departments are for the most part placed under

<sup>37</sup> Cf. *supra*, note 33.

<sup>38</sup> Hilberath, *loc. cit.*, p. 214. On municipal coöperation with the press, cf. the decree of April 12, 1938 (*Ministerialblatt für die Innere Verwaltung*, p. 656).

one single roof: that of the city hall. Staff conferences of the ranking officials in the mayor's office are a traditional feature. Consultative procedures within the administrative hierarchies are still widely used. Thus practical experience accumulating at different levels is brought to bear on administrative policy. The vice of introvert departmentalism is on the whole effectively combated. In the larger communities there has developed a system of municipal district offices, particularly in the social services. By this device, the municipal departments are maintaining a relatively intimate contact with their clientele.

*Administrative committees.* The individual departments are headed by the *Beigeordnete*, directly subordinated to the mayor. They are, however, intended to remain in constant contact with the outsider's conception of local needs and a constructive approach to them. For this purpose, the law provides for administrative committees, which were already "one of the most characteristic features of pre-Hitler municipal government."<sup>39</sup> Like the councillors, the members of the administrative committees (*Beiräte*) have only advisory functions. But, being assigned to individual branches of local administration, they are in a particularly appropriate position to make a substantial contribution to public management. It deserves emphasis that the selection of the committee membership is entrusted to the mayor, who may not only enlist the services of councillors, but also appoint citizens who through their experience are apt to give sound suggestions for the shaping and execution of administrative policies. In former years, during the republican period, the composition and attitude prevailing in most administrative committees enabled many of them to mirror the representative idea more faithfully than did a large number of the elected councils. The greater intimacy of the relationship between the committee personnel and the specific administrative problems arising every day may well prove as significant for municipal officers and the citizenry at large in the future as it did in the past.

*Municipal activities.* The work of the individual departments displays many ramifications. The full meaning of autonomy has probably unfolded itself nowhere more visibly than in the creative impulse of local government. The practical extent of municipal ownership is but one index. Side by side with it has gone the elaboration of direct gov-

<sup>39</sup> Wells, *loc. cit.* (supra, note 27), p. 657.

TABLE 4<sup>40</sup>

## SOCIAL SERVICE INSTITUTIONS MAINTAINED BY LOCAL GOVERNMENTS

<i>Function</i>	<i>Number for 34 cities with 100 000 or more inhabitants<sup>41</sup></i>	<i>Number for 35 cities with from 50,000 to 100,000 inhabitants</i>	<i>Number for 178 rural districts Fürsorgeverbände<sup>42</sup> with above 50,000 inhabitants</i>
Consultation offices for marital problems .....	35	4	45
Infants' and mothers' homes, nursery schools .....	42	20	49
Kindergartens, children's training homes .....	300	55	478
Recreation centers, youth hostels .....	91	57	317
Social guidance clinics, asylums, camps for the asocial, transient homes ....	69	36	287
Workshops for the disabled, rehabilitation agencies for cripples <sup>43</sup> and psychopaths	51	44	190
Agencies arranging for the treatment of sufferers from venereal diseases, alcoholism, tuberculosis, and cancer .....	122	78	452
Convalescent homes .....	32	28	33
Agencies arranging for the hospitalization of mental cases, insane asylums ....	32	24	56
Hospitals .....	79	37	..
Homes for the aged and infirm .....	99	74	195

<sup>40</sup> Ralf Zeitler, *Jahrbuch für Kommunalwissenschaft*, vol. 3, I (1936), p. 290. It should be noted that the statistical inquiry on which this tabulation is based has been confined to a representative number of different local governments. The figures given refer to December, 1934. Few changes have occurred in the meantime.

<sup>41</sup> The city of Berlin is not included.

<sup>42</sup> See *supra*, p. 239.

<sup>43</sup> And other physically handicapped.

ernmental functions in terms of socially desirable establishments. In these establishments—whether in the field of public health or for recreational or other purposes—local government has in a very real sense become a service institution and one most closely related to the particular needs of the individual community. Table 4 gives a cross-section of self-government's service functions, with special emphasis on welfare establishments. As a rule, such establishments are organizationally subdivisions of one of the regular departments. With relatively few exceptions, the personnel is trained for its assigned tasks.

*The government of Berlin.* Only one *Gemeinde* was originally exempted from the provisions of the Municipal Act and remained under the existing Prussian legislation <sup>44</sup>—the capital city of Berlin.<sup>45</sup> Since the adoption of the charter of 1920 combining the local governments of the Greater Berlin area into one municipality, the city has operated under a district plan, each of the twenty districts retaining a considerable degree of autonomy in its own affairs and separate representative and administrative organs. The most problematical aspect of the Berlin district plan has been that of the proper distribution of functions and control among the districts and the city's central government, especially the chief executive officer (*Oberbürgermeister*).

The charter of 1920 left "twilight zones" in this relationship, with the consequence that essential responsibilities did not receive a sufficiently concise definition. With the connivance of easy-going politicians, unscrupulous elements could utilize the "twilight zones" for their own ends. The ultimate result was a sensational scandal (1929-1930) disclosing not only improper use of funds, but also outright corruption—exceptional indeed in the annals of German municipal government. The public was thoroughly shocked, the *Oberbürgermeister* resigned under fire, and in the agitation of "antiparliamentary" parties such as the National Socialist the "Berlin mess" took first place for a long time. While the prosecuting attorney did his duty, the Prussian legislature gave thought to the question of remedies. The outgrowth was

<sup>44</sup> Act of June 29, 1934 (*Preussische Gesetzsammlung*, p. 319).

<sup>45</sup> For an excellent discussion of the government of Berlin until the Hitler Revolution, cf. Wells, *op. cit.* (*supra*, note 9), pp. 203 ff. An instructive organization chart and a summary of the latest Prussian legislation (see the preceding note) is supplied in Sarah Greer, *Outline of Governmental Organization within the Cities of London, Paris, and Berlin* (New York, 1936), pp. 37 ff.

the passage in 1931 of several charter amendments which, among other changes, considerably strengthened the position of the *Oberbürgermeister*.<sup>46</sup> The new incumbent, an outstanding administrator, did much to provide for an effective integration without making district government meaningless. But soon the gale of the National Revolution (1933) blew away the electoral implements of government. To "coordinate" the municipal administration, a National Socialist state commissioner was appointed, who soon overshadowed the *Oberbürgermeister*. The ensuing dualism—strangely contrasting with the leadership principle—came to a *de facto* end only with the mayor's resignation. It was terminated *de jure* by the cabinet act of December, 1936.<sup>47</sup> This measure represents the new charter of the metropolitan government.

The act extends the provisions of the *Deutsche Gemeindeordnung* to Berlin. The offices of *Oberbürgermeister* and state commissioner have been combined. The mayor as "city president" is at the same time placed in charge of a new state agency which has inherited the jurisdiction of the former state commissioner. As a result, the actual scope of authority of the city head has vastly increased, and simultaneously the government of Berlin has been "demunicipalized" at the top—resembling now the prefectural type existing in Paris (Prefect of the Seine). Another unusual characteristic of Berlin is the exceptionally wide range of influence reserved for the party delegate (Dr. Joseph Goebbels, Reich Minister of Popular Enlightenment and Propaganda). He must be consulted by the mayor before decisions of major importance are made in the fields of city planning and zoning, transportation and traffic control, taxation, fine arts (including exhibits), and public relations. Berlin's physical layout and that of other large cities is being subjected to thorough revamping—to accord architecturally with the "heroic" style of National Socialism.

The advisory body of the city's central government is composed of 45 councillors (*Ratsherren*). Each district is represented by at least one councillor who performs at the same time the functions of a *Beirat*<sup>48</sup> in his district. Those measures which require no central

<sup>46</sup> Cf. also Walter Norden, in *National Municipal Review*, vol. 20 (1931), pp. 697 ff.

<sup>47</sup> Act of December 1, 1936, further specified in an ordinance of December 24, 1936 (*Reichsgesetzblatt*, I, pp. 957 and 1147).

<sup>48</sup> See *supra*, p. 248.



decision and execution are delegated to these "district mayors"; the scope of the district matters is to be prescribed by municipal ordinance, which may assign certain district matters to the mayor of a neighboring district. Supervision over the metropolitan administration rests with the National Minister of the Interior directly.

*County and provincial government.* In the rural counties and in the provinces, the application of the leadership principle was bound to produce transformations corresponding closely to those that have occurred in the *Gemeinden*. The center of gravity shifted to the executive organs of self-government, while the system of popular election of representative bodies suffered complete atrophy. In the Prussian county, this process was inevitably accompanied by a noticeable growth of the influence of state administration accountable to two time-honored organizational peculiarities. In the first place, the county executive—the chief officer (*Landrat*) and the executive committee formerly chosen by the representative assembly of the county—serve in a two-fold capacity: as organs of the autonomous unit (county) and, separate from this, as organs of state administration. In addition, the power to appoint the *Landrat* is vested in the central authority.<sup>49</sup> The projected Reich County Act will probably keep the county more closely tied to the state administration (now part of the national structure) than was the case previously.

A similar trend has emerged in the relationship between self-government and state administration in the provinces, although here interlocking offices did not exist.<sup>50</sup> In the present unitary type of central government, the executive head of the state's provincial machinery has automatically risen in importance. In Prussia the provincial prefect (*Oberpräsident*) is today the key official of the national government for all regional purposes<sup>51</sup> and in his province practically on a par with the new national governors (*Reichsstatthalter*) in the other states.

<sup>49</sup> For a brief survey of the pre-Hitler set-up cf. Wells, *op. cit.* (*supra*, note 9), pp. 22 ff., 134.

<sup>50</sup> A summary account of the former arrangements is offered *ibid.*, pp. 21-22, 133.

<sup>51</sup> The organizational repercussions caused by the liquidation of federalism are reviewed in greater detail by Albert Lepawsky and Roger H. Wells, *American Political Science Review*, vol. 30 (1936), pp. 324 ff. and 350 ff. Cf. also Reinhold Lippky, *Der preussische Oberpräsident* (Greifswald, 1935); Wilhelm Rathje, *Das Amt des preussischen Oberpräsidenten* (Göttingen, 1935).

### Sec. 4. Local Powers and Central Supervision

The "universality rule." "Local governments must have freedom even to do occasionally something foolish." This statement was made in 1921 by the Oberbürgermeister of Essen, whose further career was to lead him into high cabinet positions, the presidency of the Reich Bank, and the ambassadorship at Washington—Dr. Hans Luther. Far from intending a flippant deprecation of conscientious management, he thus gave a trenchant formulation to a principle which must guide the interplay of autonomy and central supervision. Self-government would wither if subjected in each of its individual manifestations to the fiat of state authorities, and the outcome could be nothing but infinite administrative duplication. In spite of its distinct authoritarian tendencies, the *Deutsche Gemeindeordnung* has clearly indorsed the traditional "universality rule" by preserving local freedom of initiative in the pursuit of the common good and keeping the incidence of state

TABLE 5<sup>52</sup>

#### REAL ESTATE HOLDINGS OF GERMAN CITIES<sup>53</sup>

Population groups	Num- ber of cities	Hold- ings in hec- tares <sup>54</sup>	Used as follows (in percentages)					Other hold- ings
			Land with buildings	Va- cant lots	Farmed acre- age	Parks, public gardens	Wood- land, forests	
50,000-100,000.....	46	110,138	2.4	3.3	28.1	2.1	59.8	4.3
100,000-200,000.....	25	38,913	6.2	8.2	32.1	6.2	37.2	10.1
200,000-500,000.....	15	49,855	6.1	8.8	47.3	8.6	21.5	7.7
Above 500,000.....	10	61,392	9.1	8.2	48.1	7.6	21.2	5.8
Berlin.....	1	60,434	3.4	4.6	49.1	2.7	38.0	2.2
	97	320,732	4.9	5.9	39.4	4.8	39.6	5.4

supervision within legally circumscribed boundaries. As in the past, the presumption of law is in favor of municipal power to deal administratively with local problems and set up appropriate agencies, save for those spheres recognized as the realm of central authority.

*Public works and utilities.* The practical significance of so broad a charter of action can perhaps best be illustrated in such terms as municipal contracts let to industry or real estate holdings of local

<sup>52</sup> Zeitler, *loc. cit.*, pp. 277-278. The figures refer to 1934.

<sup>53</sup> Except streets and roads.

<sup>54</sup> A hectare contains about 2.5 acres.

governments. During the fiscal year 1933-1934, the grand total of contracts let to private enterprise by municipalities and municipally-controlled economic establishments amounted to about 3.7 billion *Reichsmark*. Table 5 contains a detailed statistical account of the real estate assets of larger cities. Particularly interesting are the figures for farmed acreage on the one hand and woodland and forests on the other. Table 6 is in a way a supplement to Table 5; it sheds some

TABLE 6 <sup>55</sup>

## ROADS MAINTAINED BY GEMEINDEN

<i>Population groups</i>	<i>Length of roads in kilometers</i> <sup>56</sup>	<i>Kilometers per 1,000 inhabitants</i>
6,000- 10,000 <sup>57</sup> .....	10,933.6	3.3
10,000- 15,000 <sup>58</sup> .....	6,820.6	2.9
15,000- 20,000 <sup>59</sup> .....	3,849.0	2.4
20,000- 50,000 .....	11,111.2	2.2
50,000-100,000 <sup>59</sup> .....	6,811.8	2.0
100,000-200,000 .....	6,596.5	1.8
200,000-500,000 .....	6,388.6	1.2
More than 500,000 (except Berlin)	7,984.8	1.2
Berlin .....	3,821.6	0.9
Total.....	<u>64,317.7</u>	<u>1.8</u>

light on the scope of municipal responsibilities for road maintenance. The great variety of establishments serving the general welfare of the citizenry has already been suggested.<sup>60</sup>

Only in one respect has the Municipal Act applied the brakes—in relation to the economic activity of the *Gemeinden*. This is partly the result of pressure emanating from small-scale entrepreneur groups—the economic notions of the National Socialist Party having a distinct middle-class complexion—and partly the direct consequence of organizational defects. During the postwar period most of the mu-

<sup>55</sup> Zeitler, *loc. cit.*, vol. 3, II (1936), p. 196. The figures refer to April, 1935.

<sup>56</sup> 1 kilometer is nearly five-eighths of a mile.

<sup>57</sup> Only 438 *Gemeinden* of this size are included in the inquiry on which the tabulation is based.

<sup>58</sup> Except 6 *Gemeinden* of this class.

<sup>59</sup> Except 3 *Gemeinden* of this class.

<sup>60</sup> See *supra*, pp. 248 ff.

municipal utilities availed themselves of the device of private incorporation in order to free the management from the shackles of ordinary fiscal procedure and enable it to operate under the same more elastic rules evolved by commercial practice. Experience proved, however, that this arrangement—accompanied often by a virtual exemption from governmental audit—engendered an undesirable looseness of managerial policy inviting even questionable transactions and irregularities. The “Berlin mess” (involving largely such municipal enterprises) was, in the eyes of many, convincing evidence. The present official attitude is expressed in the following statement coming from well-accredited quarters: “We fared badly with the excessively bloated economic enterprises of our municipalities.”<sup>61</sup> The standards of legitimate and exaggerated expansion may, of course, vary with the times. Today the municipalities with more than 5,000 inhabitants, including counties and provinces, still control or participate in the control of some 235 utilities operating as private corporations. This figure represents nearly one-third of all power systems so organized, two-thirds of all such gas and water systems, and more than half of all urban traction systems set up as private corporations.

The abrupt shift from easy money conditions fostered by the influx of foreign capital (1925-1928) to the deflationary tendencies of the early depression years had marked effects upon the municipal utility structure as a whole. This in itself created vulnerability. Nor were credit problems the management's only nightmare. Urban transportation systems (trolley, bus and subway lines) experienced, for instance, a marked shrinkage of the number of passengers. The decline amounted on the average for Germany's more than 400 systems—mostly owned or financially controlled by municipalities—to above 50 per cent of the traffic volume enjoyed by them during the all-time high of 1928-1929. In the majority of cases, these enterprises, being “justly considered highly sensitive barometers of economic conditions,”<sup>62</sup> have not yet ceased to labor under operating deficits.

The drop of passenger figures is closely related to the large increase of unemployment up to 1933. Since then the traffic figures have risen but slowly, altogether out of proportion with the impressive progress

<sup>61</sup> Harry Goetz, *Jahrbuch für Kommunalwissenschaft*, vol. 3, II (1936), p. 267.

<sup>62</sup> August R. Lingnau, *ibid.*, p. 130.

of reemployment indicated in the official labor statistics. One factor cited as an explanation by a German authority is the "considerably lower wage scale" <sup>63</sup> in comparison with the immediate pre-depression period; another (he suggests) the increased use of bicycles, the "poor man's automobile." This example may suffice to illuminate the general situation as it confronts municipal utilities. Under the circumstances, it is probably more remarkable that on the whole the municipalities have doggedly shielded the creations of autonomy <sup>64</sup> than that some have wearied of their responsibility.

*Relief expenditures.* The strongest impact of the economic depression, however, was not registered by the municipal utilities but by the public welfare departments of local governments. Table 7 requires no

TABLE 7 <sup>65</sup>  
RELIEF CASE LOADS OF LOCAL GOVERNMENTS

<i>Category of needy</i>	1929	1933	1934	1935	1936	1937
1. Disabled veterans, inflation victims.....	1,037,600	891,500	879,500	869,600	853,000	817,400
2. Unemployed .....	330,000	2,431,100	1,108,100	672,900	378,500	191,700
3. Recipients of supplementary relief among those drawing unemployment insurance and national crisis relief benefits .....	31,700	252,400	275,700	247,900	234,800	151,700
4. Unemployed with limited employability.. ..	.....	439,400	424,200	332,900	255,400	175,400
5. Other destitute.....	502,300	657,000	640,400	635,700	750,100	721,100
Totals .....	1,901,600	4,671,400	3,327,900	2,759,000	2,471,800	2,057,300

elucidation in this respect. Even in 1936, those depending on relief owing to lack of employment—directly or indirectly—represented in their total number (categories 2, 3, and 4 of Table 7) the largest group of the local welfare clientele. The general pressure on the labor market caused by a still heavy demand for unskilled work has made employment prospects for the destitute with limited employability so dim that many of them have been relegated to the statistical bottom classification (category 5 of Table 7).

<sup>63</sup> August R. Lingnau, *ibid.*, p. 142.

<sup>64</sup> Cf. also Oskar Maretzky, *Wirtschaftsbetriebe der Gemeinden* (Berlin, 1934).

<sup>65</sup> This tabulation is based on the official Reich statistics. It represents the total relief load for all local governments. The figures refer to March 31 of each year.

A glimpse of the financial side of local relief during the depression is offered in Table 8. This computation also suggests the effects on local budgets of national measures in the "battle against unemployment." There can be little doubt that local government would have broken down entirely under the burden of depressional unemployment had not a substantial part of it eventually been shouldered by the Reich. The national grants were computed on the basis of the figures of unemployed receiving local relief and maintaining their registration with the labor exchanges. As the labor exchanges are not municipal establishments but agencies of the national unemployment insurance system, the Reich thus kept the figures under control.

TABLE 8 <sup>66</sup>

## RELIEF EXPENDITURES OF GERMAN LOCAL GOVERNMENTS

	<i>Amounts in Reichsmark</i>		
	1933	1934	1936
Cash relief <sup>67</sup>			
(current cases).....	1,768,700,000	1,289,200,000	762,000,000
For unemployed alone (1,327,800,000)		(852,700,000)	.....
Single grants in cash or kind .....	236,800,000	183,400,000	131,000,000
Total.....	2,005,500,000	1,472,600,000	893,000,000

*State intervention in local government.* The Municipal Act sanctions the firmly established practice of devolving certain state functions upon the *Gemeinden*. As in the past, these do not accrue to the realm of local autonomy. In the administration of delegated tasks, local governments remain subject to immediate state direction. Thus the *Gemeinde* serves a dual purpose. The pragmatic utility of such an arrangement is self-evident. On the other hand, however, it must be recognized that the homogeneity of local administration may be severely impaired if the scope of this devolution should exceed tolerable proportions or if eventually a considerable variety of state agencies should keep an eye on the mayor's desk. Moreover, certain functions of great local significance have been absorbed by the state—the best example being police. Lately, this trend has become more rather than

<sup>66</sup> The figures are taken from the official Reich statistics.

<sup>67</sup> This is the regular form of public relief.

less marked. Notwithstanding the leadership principle, "the unity of administration has decreased rather than grown since 1933."<sup>68</sup>

Public health, for instance, has for all practical purposes become a state function, separately administered,<sup>69</sup> with the result that the new organization adversely affects the organic interrelations required between this sphere and other fields such as public welfare. No less striking is the new provision saddling local authorities with the obligation to enact by ordinance any changes in the administration of secondary schools which ministerial instructions may demand.<sup>70</sup> Fire departments have recently been placed under centralized guidance;<sup>71</sup> henceforth state officers may assume command in combating serious conflagrations. Most curious is perhaps the ministerial injunction suspending the right of municipalities to organize statistical bureaus<sup>72</sup>—a decree which is fortunately not retroactive. Publicity and travel are also no longer left to the free promotional discretion of local governments. Here they have slid under the jurisdiction of the National Council for Commercial Advertising<sup>73</sup> and the Reich Travel Organization<sup>74</sup>—both satellites of the Propaganda Ministry. These and other innovations carried in their wake reams of peremptory requests addressed to the responsible local officials. In the words of a well-informed German observer, detailed investigation shows "everywhere the picture of diffusion and complexity."<sup>75</sup> The *Gemeinde* serves today too many masters and is "doubling up" in its own house.

In the rural county the situation is not fundamentally different. Some branches of county administration have been put under the direct supervision of specialized state services, outside the regular channels of central supervision. Building inspection has become a state responsibility discharged in many cases by the higher authorities.<sup>76</sup> Another new law facilitates the transfer of county roads into the jurisdiction of the state. In fact such transfer can be decreed from above.<sup>77</sup>

<sup>68</sup> Fritz Markull, *Jahrbuch für Kommunalwissenschaft*, vol. 3, II (1936), p. 88.

<sup>69</sup> Act of July 3, 1934 (*Reichsgesetzblatt*, I, p. 531).

<sup>70</sup> Ordinance of March 23, 1936 (*ibid.*, p. 272).

<sup>71</sup> Act of December 15, 1933 (*Preussische Gesetzssammlung*, p. 484). Cf. Alexander Lehmann, *Jahrbuch für Kommunalwissenschaft*, vol. 5, I (1938), pp. 75 ff.

<sup>72</sup> Decree of January 3, 1936 (*Ministerialblatt für die Innere Verwaltung*, p. 31).

<sup>73</sup> Act of September 12, 1933 (*Reichsgesetzblatt*, I, p. 625).

<sup>74</sup> Act of March 26, 1936 (*ibid.*, p. 271).

<sup>75</sup> Markull, *loc. cit.*, p. 110.

<sup>76</sup> Act of December 15, 1933 (*Preussische Gesetzssammlung*, p. 491).

<sup>77</sup> Act of March 26, 1934 (*Reichsgesetzblatt*, I, p. 243).



Although these developments undoubtedly cut into the substance of county government, it would nevertheless be erroneous to assume that the county has become nothing but a convenient subdivision of state administration. The inherent powers of the county have not been annulled beyond the inroads caused by recent legislation. As the most important type of a federation of basic units of local government, the *Landkreis* is neither a dying political organism nor the "dark continent" of German public administration. Its administrative staffs are widely professionalized. Through its intimate connection with the smaller cities, rural towns, and *Landgemeinden* combined in it for the purpose of meeting common needs, the rural county may well prove able to counterbalance the increased domain of state stewardship. Reintegration, however, must be the password here as for the *Gemeinden*.

*The central administrative hierarchy.* Although specific supervisory powers have been appropriated to a number of authorities controlling but one administrative function, the interests of the central government are in general represented by only one single hierarchy. Thus the *Landrat*, in his capacity as state officer, has general supervisory authority over the primary units of local government belonging to the rural county. For city-counties the same responsibility rests with the chief executive official in charge of the state's district administration (*Regierungspräsident*), whose direct superior is the provincial prefect. The district (*Regierungsbezirk*) is the intermediate government area—a subdivision of the province embracing several counties, but not itself a unit of self-government. Finally, the highest supervisory authority standing above the provincial prefects and the national governors of the several states is the Reich Minister of the Interior.

The Municipal Act provides that *Gemeinden* may in cases of disagreement with the supervisory authority seek redress with the hierarchically higher powers. The law gives a detailed catalogue of the means of supervision. Especially strong are the safeguards of central vigilance in the whole public economy of the *Gemeinden*. As to inter-municipal establishments, mention may be made of the legal requirement that the organization of joint authorities<sup>78</sup> be sanctioned by the supervisory agency. By express provision of the *Deutsche*

<sup>78</sup> See *supra*, pp. 238 ff.

*Gemeindeordnung*, mayors and *Beigeordnete* may be removed by the supervisory authority, but only during the initial period of their term of office. The latter restriction does not apply to the recall of councillors. In view of the scrutiny with which appointments are to be made, it is hardly conceivable that these extraordinary powers will have practical significance save for exceptional cases. Otherwise, removals are possible only for cause, by decision of a disciplinary court.

### *Sec. 5. Finance and Personnel*

*Local revenues.* The interweaving of local, state, and national finances, now a *fait accompli*, dates in its beginnings back to the early postwar years. Far-reaching reorganization measures put under way in 1920 foreshadowed the growing nationalization of the German tax system. Aside from a defined share of the national tax revenue, the state and local governments had to look for their support primarily to two taxes left in their jurisdiction: the real property tax and the business tax raised from the profits of commercial or industrial enterprise—in a way a surtax related to the national income and corporation taxes.<sup>79</sup>

It was, however, only a question of time before the national cabinet faced the necessity of freezing the rates of both the real property and the business taxes—a step to which the British “derating” legislation offers a certain parallel. Under the present law<sup>80</sup> national control over the “reserved” taxes has been intensified, but owing to the urgent remonstrances of local governments their influence, particularly in the assessment process, is more adequately protected than was the case heretofore. According to the intentions of the national government, the real property and the business taxes are to become the “backbone of local finance.”<sup>81</sup> Their present rank of importance within the local revenue system<sup>82</sup> is indicated in Table 9.

<sup>79</sup> For detailed information cf. the literature cited *supra*, note 7.

<sup>80</sup> Acts of December 1, 1936, and July 31, 1938 (*Reichsgesetzblatt*, I, pp. 961 and 966).

<sup>81</sup> Markull, *loc. cit.*, p. 104.

<sup>82</sup> On the evolution of local finance in the Third Reich, cf. Richard Zimmermann, *Die deutschen Gemeindefinanzen nach der nationalsozialistischen Revolution* (Cologne, 1936). On the municipal tax structure of Mensens-Bohley-Krutsch, *Handbuch des Gemeindlichen Steuerrechts* (Munich and Berlin, 1938).

TABLE 9<sup>83</sup>

ACTUAL LOCAL TAX<sup>84</sup> RECEIPTS OF GEMEINDEN<sup>85</sup> WITH MORE  
THAN 5,000 INHABITANTS

<i>Amounts in million Reichsmark</i>			
	<i>April to June</i>	<i>April to June</i>	<i>April to June</i>
	1933	1935	1936
Real property tax .....	175.8	159.9	165.9
Business tax .....	122.1	108.5	148.7
Real property surtax <sup>86</sup> .....	85.8	67.8	45.0
Citizen tax <sup>87</sup> .....	69.1	79.0	88.2
Unearned increment tax .....	9.7	13.2	17.1
Beer tax .....	27.6	27.5	29.4
Beverage tax .....	6.0	7.1	7.6
Entertainment tax .....	6.6	7.0	7.9
Dog tax .....	6.5	7.3	6.9
Other <sup>88</sup> .....	4.8	3.1	2.9
Total .....	514.0	480.4	519.6

The considerable increase of the national tax revenue since 1933 owing to economic recovery has caused an automatic rise in the Reich allotments to state and local governments, and has thus bolstered up local budgets. As compared with the depression low of 6.8 billion *Reichsmark* in the fiscal year of 1933, the total tax and customs revenue of the Reich had risen to 9.7 billions in 1935—an increase of 37.4 per cent. In 1936 it was almost 11.5 billions, and it increased further in 1937. The local share of the national income, corporation, and sales taxes has not been permitted to grow at the same rate. Nevertheless, in 1935 the *Gemeinden* (including unions of *Gemeinden*) received as their portion no less than 878 million *Reichsmark*, bringing for this year their total revenue derived from local taxes and allotments (national and state) to about 3.55 billions, as contrasted with 3.13 billions for 1933. The gain amounts to 13.4 per cent—placing these local governments above the 1929 level (3.46 billions). But it would be a grave

<sup>83</sup> Zeitler, *loc. cit.* (*supra*, note 55), p. 204.

<sup>84</sup> Including state allotments.

<sup>85</sup> Including unions of *Gemeinden*.

<sup>86</sup> Based on the gains made through redemption of devaluated mortgages during the inflation period (1921-1923).

<sup>87</sup> A crude depression-born per capita tax.

<sup>88</sup> Equalization fund grants are included for 1933, excluded for 1935 and 1936.

mistake to think that mayors can now breathe easily. The amount of gross expenditure exceeding the administrative revenue (fees, franchises, miscellaneous) and consequently to be met by taxation or the surpluses of municipally-owned economic enterprises and other establishments—known as the *Zuschussbedarf* of local governments—still presents problems of appalling magnitude to municipal treasurers.

TABLE 10<sup>89</sup>

## NET REVENUE NEEDS OR ZUSCHUSSBEDARF OF THE GEMEINDEN

<i>Fiscal years</i>	<i>Amounts in million Reichsmark</i>
1929-1930 .....	5,397.4 <sup>90</sup>
1932-1933 .....	4,260.8
1933-1934 .....	4,102.1
1934-1935 .....	4,075.7
1935-1936 .....	4,000.0 <sup>91</sup>
1936-1937 .....	3,950.0 <sup>92</sup>

Retrenchment has diminished the pressure to some extent. But the budgetary pinch has not ceased to be felt sharply by every responsible finance officer who fulfils his duties according to the letter of the law. To do so requires today considerable strength of personality. Revolutionary displacement of old forms and the urge to control established public hierarchies has inevitably translated itself also into the blunt demand for posts. Personnel expenditures of local governments have increased "considerably," as a recent ministerial decree on the administration of municipal finance states "with great anxiety."<sup>93</sup> It is significant that the Reich's repeated demands for budget throttling in the *Gemeinden* have found their counterpart in a national ordinance forcing local governments explicitly to accumulate specified reserve funds.<sup>94</sup> Accumulation has been slower than was expected. Still, in

<sup>89</sup> Based on official figures.

<sup>90</sup> Including unions of *Gemeinden*.

<sup>91</sup> Preliminary figure.

<sup>92</sup> Estimated amount.

<sup>93</sup> Decree of January 30, 1936 (*Ministerialblatt für die Innere Verwaltung*, p. 159). Cf. also the decree of January 21, 1935 (*ibid.*, p. 101).

<sup>94</sup> Ordinance of May 5, 1936 (*Reichsgesetzblatt I*, p. 435). Cf. Th. Steimle, *Das Kommunale Rücklagenproblem* (Berlin, 1937); Walter Parlow, *Rücklagen im Gemeindehaushalt* (Stuttgart, 1938).

1938 the total came close to 2 billion *Reichsmark*. Of most of these reserve funds, 75 per cent must be invested in government bonds issued by the Reich—shadow of the Four-Year Plan!

The evolution of financial interrelations, national, state, and local, has reached a new phase in an ordinance of the National Minister of the Interior issued late in 1937.<sup>95</sup> To compensate for a reduction of state revenues, the ordinance projects a transfer of certain financial burdens from the state governments to the municipalities, the most important of which are expenditures for elementary schools, trade schools, secondary schools, and road construction. By joint decree of the National Minister of the Interior and the National Minister of Finance, further transfers can be imposed. On the other hand, the ordinance guarantees the municipalities a reasonable share of the Reich's allotments to the states.

The share must be at least 20 per cent of the allotments received by the state, and may not exceed 30 per cent. The percentage, moreover, must be uniform, although the allotments for the states are made from the revenue of three different national taxes (income, corporation, and sales taxes). Twenty-five per cent of the funds thus assigned to the municipalities are to be accumulated in equalization funds (one for each state area). From these, municipalities in need of special aid are entitled to receive grants. The remaining 75 per cent are to be distributed among the municipalities according to a formula to be approved by both the National Minister of Finance and the National Minister of the Interior. In working out the distribution formula, account must be taken of the size of the municipalities, their own tax resources, and the municipal population structure, especially the percentage of children.

The bulk of municipal tax revenue will remain the real property tax and the business tax. The former will be the financial bulwark of rural municipalities, while the latter will have the same importance for the industrial areas. Among the municipal revenues, the business tax is

<sup>95</sup> Ordinance of December 10, 1937 (*Reichsgesetzblatt* I, p. 1352). Cf. Günter Schmölders and Hans J. Tapolski, *Jahrbuch für Kommunalwissenschaft*, vol. 4, II (1937), pp. 341 ff. and 362 ff.; Hans Berthold, *ibid.*, vol. 5, I (1938), pp. 19 ff. On the reform of school administration see Rudolf Keller, *ibid.*, pp. 36 ff.

at present the only elastic factor. This is a weakness of the existing municipal revenue system, which will either call for redress or tend to tie the municipalities to "must programs." At the present time, however, such restriction accords in a way with the necessity of ridding local governments of much of their present indebtedness. Until this indebtedness is considerably reduced, little leeway is left for municipal activities going beyond what is considered urgent from a national as well as from a local point of view.

*Local debts.* The need for economy is indeed reflected in most of the provisions of the Municipal Act. This is certainly not due merely to theoretical preference. The *Gemeinden* entered the Third Reich burdened "with a mountain of debt."<sup>96</sup> The indebtedness of cities with a population of more than 10,000—including the intermediate bodies of self-government but exclusive of the city-states of Hamburg, Bremen, and Lübeck—amounted early in 1937 to not less than 9.17 billion *Reichsmark*. But two years before it had been 9.81 billions; the decline of 6.5 per cent, although in itself not impressive, evinces at least an effort to reduce the indebtedness to a bearable extent. What aggravated the situation was the fact that a perturbing part of the debt-load represented short-term indebtedness. Effective conversion measures sponsored by the Reich have in the meantime helped local governments out of the tight corner. But the shadow of default would still loom high were it not taken for granted that the national government would underwrite virtually all municipal indebtedness in any serious emergency. About 3 billion *Reichsmark* had been converted by 1938.

*Fiscal management.* Yet it would be erroneous to assume that the financial status of local government points to the absence of effective fiscal procedure. The technical aspects of sound budgeting have for many years found proper attention. The Assembly of German Cities<sup>97</sup> did much to insure uniform practice by working out a standard budget form for the use of municipal treasurers. Legal codification of fiscal procedure binding upon local governments<sup>98</sup> followed in

<sup>96</sup> Roger H. Wells, *National Municipal Review*, vol. 25 (1936), p. 515. Cf. also Hans Storck, *Der Gemeindekredit*, 2nd ed. (Berlin and Stuttgart, 1937); Herbert Bohmann, *Schuldenrecht der Gemeinden und Gemeindeverbände* (Berlin, 1937).

<sup>97</sup> See *supra*, notes 8 and 33.

<sup>98</sup> *Gemeindefinanzgesetz* of December 15, 1933 (*Preussische Gesetzsammlung*, p. 442); *Bekanntmachung über das Haushalts-, Kassen- und Rechnungswesen der*

1933. The *Deutsche Gemeindeordnung* elaborates on these precedents by dealing in concrete terms with municipal economy in its many ramifications—"undoubtedly the most important portion of the law"<sup>99</sup> from an administrative angle.

The financial straits in which German local government has navigated since 1929 could not fail to affect the legislation of 1935. The responsibilities inherent in autonomy are now sharply underlined, while the powers of the supervisory authorities have been strengthened correspondingly. The need for further municipal bond issues has become a matter practically reserved for central decision. Emphasis is placed also on super-local auditing conducted by special agencies<sup>100</sup> linked to the National Ministry of the Interior, and on the supplementation of administrative audits by comprehensive economic and organization audits.

In 1937 a comprehensive regulation dealing with the preparation and execution of municipal budgets was adopted in the form of an ordinance<sup>101</sup> supplementing the provisions of the Municipal Act. This ordinance, addressing itself to all municipalities of more than 3,000 inhabitants, lays down concise stipulations for the organization of municipal budgets, the calculation of revenues and expenditures, and the procedures and controls conducive to effective budgetary administration. The new rules require preliminary and semi-annual budget reports to insure greater publicity of fiscal management. To clarify budgetary practice, the ordinance gives a lengthy catalogue of official definitions. It includes, further, a series of standard forms binding upon budgetary procedure. The forms will introduce uniformity into municipal budget ordinances, the method of their publication, the structure of the budget,

Gemeinden und Bezirke of October 9, 1933 (*Bayerisches Gesetz- und Verordnungsblatt*, p. 329).

<sup>99</sup> Wells, *loc. cit.* (*supra*, note 27), p. 657. Cf. also K. M. Hettlage and Wilhelm Loschelder, *Gemeindewirtschaftsrecht*, 4 vols. (Berlin and Eberswalde, 1936). On central purchasing cf. Bernhard Mewes, *Jahrbuch für Kommunalwissenschaft*, vol. 5, I (1938), pp. 61 ff.

<sup>100</sup> Cf. Wilhelm Loschelder and Wolfgang Spielhagen, *Prüfung von Gemeinden und Gemeindeverbänden* (Eberswalde, 1935). Another publication "by practitioners for practitioners" is Peter van Aubel and Hans Seydel, *Kommunales Prüfungswesen. Teil I: Prüfung kommunaler Verwaltungen. Teil II: Prüfung kommunaler Betriebe* (Berlin, 1934 and 1936). Cf. also P. van Aubel, *Amtliche Vorschriften zur Pflichtprüfung in Gemeinden und Gemeindebetrieben*, 5th ed. (Berlin, 1938).

<sup>101</sup> Ordinance of September 4, 1937 (*Reichsgesetzblatt*, I, p. 921). Cf. also Wilhelm Loschelder, *Jahrbuch für Kommunalwissenschaft*, vol. 4, I (1937), pp. 26 ff.; K. M. Hettlage and W. Loschelder, *Gemeindehaushaltsrecht* (Berlin and Eberswalde, 1938).



the arrangement of its constituent items, and the organization of supplementary budgets. Larger municipalities may adopt for their own use still more detailed regulations, which must, however, harmonize with the provisions of the Reich ordinance. The administrative instructions for the application of the ordinance issued jointly by the National Minister of the Interior and the National Minister of Finance represent a veritable manual of budgetary practice.

*Local government personnel.* Even more striking is probably the impact of the unitary state upon the entire sphere of local personnel. Widespread professionalization of the staff and line services of self-government—in close analogy to the legal rules covering recruitment, promotion, classification, discipline, and retirement of national and state civil servants<sup>102</sup>—has been one of the outstanding features of German local government for many years. This applied also to the salaried officers of executive rank, including mayors. As career administrators, these officials frequently rose (and still rise) from the obscurity of smaller or middle-sized communities to top positions in a large city, transferring perhaps in between to a higher civil service position with the central government.

At no time did the enlistment of university graduates for responsible municipal offices represent a matter requiring, in the words of a recent British alarm call, "public opinion to take a hand."<sup>103</sup> Nor was there ever a need for a special "code of professional conduct" such as was proposed at one of the last annual conferences of England's NALGO<sup>104</sup> (Margate Conference). For in Germany the permanent personnel of local authorities considered themselves an integral part of what was looked upon as a national institution—the civil service, united by a common tradition and governed in outlook and behavior by professional considerations whose implications, however subtle, disciplinary court decisions had made eminently clear. One principal problem, however, remained unsolved: the final integration of training programs for the rank and file of local government personnel. In 1936

<sup>102</sup> Cf. Morstein Marx, *op. cit.* (*supra*, note 32), *passim*.

<sup>103</sup> Letter to the editor signed by the vice-chancellors of the Universities of Oxford, Cambridge, and Bristol; *The (London) Times*, April 22, 1937; cf. also the editorial in the same issue.

<sup>104</sup> See the conference report in *Local Government Service*, vol. 17 (1937), pp. 149-150.

the Assembly of German Local Authorities organized a special committee for the purpose of inquiring into the effectiveness of the existing training facilities (*Gemeindeverwaltungsschulen*) and of placing the professional preparation of municipal civil servants of sub-executive rank on a broader foundation. The work of the committee went far toward accomplishing this task.

*Training schemes.* The committee was able to agree upon a general framework of rules<sup>105</sup> to be applied henceforth to the training for the career service in local government. The rules (approved by the Reich Minister of the Interior in April, 1937) confine themselves to those groups of local civil servants forming the bulk of the permanent personnel. It was felt that no special regulations were required for the higher municipal service, since here the general provisions covering the training of the ranking officers in the national and state administration could be relied upon in the future as in the past.

*The higher municipal service.* As a matter of principle, candidates for the higher municipal service will therefore continue to complete their university education prior to entering a probationary service with different governmental agencies. In their academic studies they may either place emphasis upon jurisprudence, including special legal disciplines such as administrative law, or they may concentrate on economics. By passing a state examination at the end of the probationary service (lasting from three to four years), they become eligible for the higher administrative career in each level of government. As such, they are also qualified to transfer from positions in the national and state administration to local authorities and vice versa. Positions may, however, be filled also with candidates possessing "special fitness" as an equivalent of eligibility attested by state examination. Herein lies an exception from the general rule—exception that has been officially sanctioned by the new Civil Service Act of 1937.

To this degree, uniformity of training for the higher municipal career (and correspondingly for professional groups in the narrow sense such as engineers, physicians, or veterinarians) had existed since prewar times. The only question left unanswered was that of supplementary facilities focusing on the problems of local government. A

<sup>105</sup> Cf. Rudolf Elleringmann, *Jahrbuch für Kommunalwissenschaft*, vol. 4, I (1937), pp. 101 ff.

partial answer can be found in the new national regulations (June, 1937) revising the details of the general probationary service leading to eligibility for the higher administrative career. In these regulations greater stress has been laid upon a period of training with one or the other unit of local government. Another remedy, repeatedly proposed, would lie in a regular course program implementing the normal university curriculum. The Institute for Municipal Research at the University of Berlin, for instance, has for some time offered a six-semester program embracing the field of municipal science in its entirety. The new Institute of Municipal Research at the University of Freiburg, opened in 1937 as the second of its kind, is sponsoring an identical scheme. The German Administrative Academies, established with the coöperation of central departments and universities in the immediate postwar years by organizations of civil servants as institutions of post-entry training, have also provided courses and discussions devoted to municipal topics.

Up to now, however, such supplementary instruction in municipal science has not been made a requirement to be met by each candidate. Nor has the problem of a standardized practical initiation into the responsibilities of the higher municipal service found a satisfactory solution. The methods followed in different localities vary. In the larger units of local government, aspirants are usually introduced into the work of the departments by being assigned for some time to each of the chief officers or the mayor himself.

*The middle groups.* The middle groups of the municipal service occupy a particularly important position. They not only represent a reservoir from which outstanding officers can be promoted into the higher municipal service, but also have a greater influence on the shaping of administrative policy and administrative practices than is the case in the central departments. The rules of 1937 distinguish between the so-called dual career and the unitary career systems. For each system the training program is different.

The dual career divides what is known as the simple middle service from the advanced middle service. For the simple middle service, graduation from an eighth-grade elementary school is required. The apprentice must pass through a three-year initiation period, combined with special schooling. At the end of this term, and after passing the

apprentice examination, he enters as aspirant the probationary service for three more years. Topping this training, he has to take the so-called Course I of a municipal training school. The closing Examination I confers eligibility for permanent appointment to the entrance position of the simple middle service. From here the official can rise to other positions within this class.

The advanced middle service requires at least two years of secondary school education, in addition to the instruction provided by an eight-grade elementary school. Excellently qualified officials in the simple middle service may, however, advance by promotion into any of the positions embraced by the upper middle service. Aspirants for the advanced middle service must devote four years to their probationary training. Afterwards they have to register for Course II of a municipal training school, at the end of which they must pass Examination II in order to acquire eligibility for permanent appointment.

The unitary career system does not recognize the cleavage between the simple and advanced middle services. The educational requisites are identical with those for the advanced middle service. The probationary period, as a rule, lasts three years. Candidates must first pass Examination I. After two subsequent years of service, they are entitled to register for Course II (lasting two more years). They reach the closing stage of their training with the passage of Examination II.

The rules of 1937 also contain special provisions relating to the structure and conduct of municipal training schools. The course for apprentices extends over a period of three years, with 120 hours of school work each year. Course I is scheduled to provide between 450 and 550 hours of class work. Course II, designed to meet the needs of the advanced service, is to offer between 585 and 715 hours of class work. The examination committee is composed of the head of the municipal training school, representatives of the administrative service, and members of the teaching body. A delegate of the supervisory authority is entitled to be present at the examination. If he objects to passing a candidate, failure is the inevitable result. Passage is to be certified by an official document.

Officers holding advanced positions in the middle service are encouraged to register with an Administrative Academy. The Administrative Academies, providing in a way a substitute for university

training, issue diplomas testifying to the successful passage of their course program. Possession of such a diploma does not establish any claim to promotion, particularly into a position of the higher municipal service. Those holding a diploma of an Administrative Academy, however, may well expect to be considered for an advancement into the higher municipal career, if of outstanding calibre.

It will take some time before the rules of 1937 have been transformed into actual practice in all units of local government (except the small *Landgemeinden*). In many of the larger municipalities, the substance of the rules has found application for several years. This experience has on the whole been constructively utilized in the new provisions. The emphasis placed by the rules of 1937 on thorough training is a wholesome feature—particularly since there has been a perceptible upward trend of local personnel figures. In March, 1937, local governments (basic and intermediate units) employed a total of 281,029 civil servants and aspirants, while 154,282 government employees occupied positions on a contractual basis without being technically included in the civil service. Altogether, the number of local employees amounted, therefore, to 435,311. The share of civil servants was 64.6 per cent, as against 35.4 per cent for other regular employees. The figure for 1937 represents an increase of 3.4 per cent over the corresponding figure for March, 1936, and surpasses the previous all-time high of about 412,000 reached in 1930. Prior to 1930, the figure declined to about 390,000 during the early depression years. It is interesting that the percentage of contractual employees has steadily risen.

*National Socialist penetration of the local service.* Yet, however far-reaching the reform, it was not actuated by National Socialism's totalitarian claims. Greater importance in this respect attaches to the fact that under the new civil service law<sup>106</sup> every salaried official employed by local authorities owes personal fidelity to "Leader and Reich." Each local officer must consider himself "the executor of the

<sup>106</sup> Act of January 26, 1937 (*Reichsgesetzblatt*, I, p. 39). See also James K. Pollock and Alfred V. Boerner, *The German Civil Service Act*, Chicago, 1938; Fritz Morstein Marx, in *American Political Science Review*, vol. 31 (1937), pp. 878 ff. The application of the act to the personnel of local authorities is regulated by the ordinances of July 2 and 3, 1937 (*Reichsgesetzblatt* I, pp. 729, 730). The Police Officers Act of June 24, 1937 (*ibid.*, p. 653) contains supplementary provisions. On the group distribution of municipal personnel cf. Albert Zwick, *Jahrbuch für Kommunalwissenschaft*, vol. 5, I (1938), pp. 93 ff.

will of the State supported by the National Socialist Party." As such, he is "indirectly" a civil servant of the Reich, while his "direct" master (the respective unit of local government) has not lost authority and disciplinary control over him. Although employed locally, he has to respect his legal obligation of "taking at all times a stand for the principles and aims pursued by the National Socialist Party."<sup>107</sup> But he must accept orders "from his superior alone." Final appointment of all civil service aspirants at the end of their probationary service period will henceforth depend on a favorable report of one of the especially designated Party agents. If the appointing officer disagrees with the report, he cannot simply discard it. All he can do is to submit the matter to the central authorities, which have to consult the Substitute of the Leader in Party Affairs (Rudolf Hess, Reich Minister without portfolio). Such cases of disagreement will be rare; for a previous decree<sup>108</sup> had already provided that local authorities must assign the tasks of personnel officers to National Socialists exclusively.

That all "politically unreliable" elements and all "non-Aryans" have been weeded out from the local services<sup>109</sup> should be self-evident. But while political scrutiny was focused sharply on the higher ranks, the total turnover effected by the National Revolution probably does not reach ten per cent. Patently, this figure can give no indication of the much deeper transformations which have occurred in terms of personal influence and standing within the official hierarchies. On the other hand, the transition period is drawing to its close. Political compliance has become an established habit, and a younger generation is stepping in. It is therefore not surprising that even the personnel chief of the National Ministry of the Interior has deemed it advisable to recommend a "complete return to the merit rule." The right creed is indispensable, but stress is increasingly laid on the requirement of a high-grade training background. So much can be said: the general standards of professionalized administration have on the whole withstood the dislocations of the past five years. Here as in other fields,

<sup>107</sup> Thus Dr. Wilhelm Frick, National Minister of the Interior, *Hamburger Fremdenblatt*, no. 28, January 28, 1937 (evening edition).

<sup>108</sup> Decree of October 23, 1935 (*Ministerialblatt für die Innere Verwaltung*, p. 1311).

<sup>109</sup> Cf. Fritz Morstein Marx, in *American Political Science Review*, vol. 28 (1934), pp. 467-480.



however, assimilation problems of a novel character bear upon the conduct of local government.

*The leadership principle.* What confronts German local government today is not the necessity of developing competent administrators or satisfactory methods of modern management—these are in fact the priceless legacy of past decades. More basic is the task of revitalizing self-government within the restrictions of the one-party state. Whatever the merits of the leadership principle in the guidance of the nation, its application to every single local authority has undoubtedly overtaxed the moral strength of many a mayor. In this matter German comment is unequivocal. "An ill-selected leader may injure the idea to a horrifying extent."<sup>110</sup> "Ignorance, lack of a sense of responsibility and other adverse circumstances have in many cases thus far prevented the full realization of the ideal of National Socialist self-government."<sup>111</sup>

But does this ideal admit of realization? If civic "resignation" can be overcome only by a restoration of "free opinion," would not significant public argument press dynamically forward and soon reach beyond the local domain? Can National Socialism concede locally what it does not nationally? If German self-government is to "regain strength,"<sup>112</sup> much will depend on the enlistment of the citizenry at large. The year 1936 witnessed the beginnings of a "very fruitful"<sup>113</sup> public discussion centering on the fundamental problems as they have arisen for local authorities from the iron grip of the National Socialist Party. It is true, a return to public elections is out of the question, and would in itself certainly not change anything.<sup>114</sup> But as long as there are men in Germany who "know and love the soul of self-government,"<sup>115</sup> the debate on the future of local autonomy under the leadership principle may be expected to continue.

<sup>110</sup> Markull, *loc. cit.*, p. 94.

<sup>111</sup> Hilberath, *loc. cit.*, p. 214.

<sup>112</sup> Gotthilf Bronisch, in *National Municipal Review*, vol. 25 (1936), p. 519.

<sup>113</sup> Hilberath, *loc. cit.*, p. 214.

<sup>114</sup> It may be useful to recall in this connection the thesis underlying E. L. Hasluck's *Local Government in England* (New York, 1936).

<sup>115</sup> Karl Goerdeler, *loc. cit.* (*supra*, note 35).



### *Sec. 6. Conclusion*

Looking over the past twenty years, one may say that the development of German local government has revealed a conspicuous tendency toward delocalization and officialization. The same evolution, however, can be observed throughout the world. What distinguishes the German experience from that of other countries is the fact that both the ascendancy of the unitary state and the adoption of a one-party type of government have supplied an unparalleled momentum to this development.

*Delocalization.* In a closely integrated industrial state such as Germany, many of the problems once solved locally have acquired national significance. The establishment of national systems of social insurance dating back in its beginnings to the eighties is an outstanding example. The rise of urban civilization has produced new issues of social policy pressing toward a uniform solution for the country as a whole. Physically, then, the area of local freedom has been shrinking, although experimentation on the municipal level has stimulated the crystallization of sound administrative practices later to be applied on a broader scale.

Financial exigencies of the postwar period have largely set the pace of national integration of the German fiscal system. In the Third Reich the place of local government has found redefinition. The municipalities are today looked upon as service institutions within the framework of a nation-state concentrating the ultimate power under the Reich executive. What is left of autonomy must seek its justification in national purposes. Local government and central authority do not admit of a juxtaposition under National Socialist auspices. Central supervision has vastly increased. Further municipal experimentation in the solution of community problems is, moreover, sharply restricted by the need for rigid economy. To what an extent local government might utilize its legally recognized residuum of creative freedom is an unanswerable question under present conditions. Judgment must be reserved until the financial pressure subsides. Only then would local government have an opportunity to reassert its own initiative.

*Officialization.* Emergencies everywhere beget organizational consolidation and strong hierarchical control. The professional tradition

of the municipal services has lent itself readily to the demands of emergency management. In this sense, officialization was bound to receive a new impetus in the postwar years.

Under the Weimar republic, the representative foundation of local government was constitutionally preserved, but the alignment of the elected bodies of local government with the national party system, itself sharply competitive, carried fundamental division into municipal council chambers. This made the representative organs of the municipalities to a large extent incapable of shouldering responsibility. More often than not, the final decision fell to the trained executive. On the whole, he—rather than the elected councils—safeguarded the sphere of autonomy against the encroachments of central departments—jealously defending local freedom as a charter of resourceful municipal planning.

Meanwhile thoughtful observers pondered the question whether or not the party organizations striving for council control fully met the needs of community representation. The alternative provided by the National Socialist Party as the exclusive means of civic participation in the conduct of local government is obviously equally problematical. Burdened with governmental responsibility, the National Socialist Party has become less of a movement and more of a bureaucracy. This has carried the officialization of local government a large step forward. The representatives of the public are essentially a part of the National Socialist hierarchy.

One may assume that these results do not fully accord with the intentions underlying the Municipal Act of 1935. German comment on this point is illuminating. "Jurisprudence has long discarded the belief that the incorporation of thoughts and wishes into the provisions of a law will in itself insure the intended effect: the realization of these wishes in the reality of life."<sup>116</sup> All too often the municipal councillors are little more than "a mute audience listening to the orations of the mayor," as a German observer has put it.<sup>117</sup> It is worth stressing that, in spite of studied indifference on the part of many National Socialist functionaries, proposals for the awakening

<sup>116</sup> Theodor Maunz, *Jahrbuch für Kommunalwissenschaft*, vol. 4, II (1937), p. 336.

<sup>117</sup> *Ibid.*, p. 337.

of civic interest in local government have remained the order of the day.

"The true political leader will never have a reason to be hesitant in placing the cards of municipal policy before the public; it does not therefore injure his leadership to change or to abandon entirely a project if objections raised against it prove well-founded." One is impelled to place this statement coming from authoritative quarters in Germany<sup>118</sup> side by side with the standard complaint of Soviet leaders that reliance on administrative orders is the typical procedure followed by the weak village chairman, while effective leadership operates outside such channels. It is probably a good sign that self-criticism has not vanished from German local government. As long, however, as the leadership principle is permitted to operate freely on the municipal level, the prospects for a reinvigoration of civic participation must remain dim.

Today the National Socialist Party with its exclusive claims stands between the citizen and the city hall. So far the party has given no indication of relinquishing its hold on the institutions of local government. The channels of representation are frozen. The administration of municipal affairs is remote from the sphere of the individual citizen, unless he secures a place in the grandstand by membership in one or the other organization sponsored by the National Socialist Party.

*Municipal management.* On the other hand, while the vitality of community representation has been checked by partial paralysis, the citizen has remained the beneficiary of municipal achievement. The services rendered by local government during the republican period have not been discontinued. Supplementary services, mostly initiated jointly by municipalities and party organizations, have been set up.

High standards of administrative conduct, though not left unimpaired in the course of the National Revolution, are still a distinguishing feature of German local government. Despite the accelerated march of national legislation coördinating municipal administration, it must not be forgotten that practically all of these codifications had their origin in the municipal experience accumulated over many years. Few old-timers in the permanent municipal service have failed to register their satisfaction with the non-political features of the Municipal

<sup>118</sup> Leo Hilberath, *ibid.*, p. 454.

Act of 1935, the new rules governing the training for the municipal career adopted in 1937, or the provisions for municipal budgeting laid down the same year.

There is no doubt that German municipal practice has remained worth studying by anyone interested in sound administrative methods. What jeopardizes the effectiveness of administrative skill and administrative experience is, in the last analysis, the cumulative weight of political innovations to which local government has not yet adjusted itself. It is an open question whether such adjustment is possible—without loss of identity with a great tradition. It would be premature, however, to attempt any final appraisal as long as the present era of transition has not fully come to a close.

### BIBLIOGRAPHY

Since the footnotes contain a reasonably representative cross section of the German literature devoted to local government and administration, and also introduce the reader to those publications in English most easily accessible in the United States, this bibliographical note confines itself to mentioning the most important material and a few items not included in the footnotes.

The best volume available in English, still indispensable though written before the National Revolution, is Roger H. Wells, *German Cities* (Princeton, 1932). Reference may be made to its extensive bibliography (pp. 263-273). James K. Pollock, in *The Government of Greater Germany* (New York, 1938), devotes chapter VI to "district and local administration."

An excellent study of fiscal interrelations is offered in Mabel Newcomer, *Central and Local Finance in Germany and England* (New York, 1937). Although this book does not treat the most recent developments, it presents the cardinal problems with great insight.

Outstanding among German publications is the annual *Jahrbuch für Kommunalwissenschaft*, edited by Dr. Kurt Jeserich, Managing President of the Assembly of German Local Authorities (*Deutscher Gemeindetag*) and head of the Institute for Municipal Research at the University of Berlin. The *Jahrbuch* has appeared (in two parts for each year) since 1934 (Stuttgart and Berlin).

Current information is provided by the periodical *Deutscher Gemeindetag*, the house organ of the Assembly of German Local Authorities. Mention may be made also of a loose-leaf handbook of local administration, Karl Fiehler and Kurt Jeserich, ed., *Handbuch der Gemeindeverwaltung*, 2d ed. (Munich, 1937).

More recent editions of the Municipal Act of 1935 are Hanns Kerrl and Weidemann, *Die Deutsche Gemeindeordnung*, 2d ed. (Berlin, 1937), and *Die Deutsche Gemeindeordnung*, introduced by Karl Fiehler, 2d ed. (Munich, 1938).

Examples of more recent studies of individual municipalities and densely settled areas are Hermann Freytag and Otto Most, ed., *Duisburg* (Berlin, 1938), and *Untersuchungen zum Finanz- und Lastenausgleich im Ruhrgebiet*, vol. I: *Geltendes Recht. Wirtschaftsstruktur und Gemeindefinanzen als Grundlage der künftigen Regelung* (Essen, 1938).

## PART II. FUNDAMENTAL DOCUMENTS:

### TRANSLATION OF THE GERMAN MUNICIPAL ACT (DEUTSCHE GEMEINDEORDNUNG) OF 1935

(Translation by the Author.)

The *Deutsche Gemeindeordnung*<sup>1</sup> aims at qualifying the municipalities<sup>2</sup> for the highest achievements in close coöperation with Party and State, affording them full opportunities for helping to accomplish—in the true spirit of Baron vom Stein, the creator of municipal home rule—the purpose of the State: to restore the priority of the commonweal over the individual in a united people permeated by one national will; to place the public interest before selfish ends; and to bring about the true national community under the leadership of the best of the people, in which every willing fellow-citizen finds the feeling of mutual solidarity.

The Municipal Act is a basic law of the National Socialist State. The reconstruction of the Reich will be completed on the foundations laid by the act.

The Reich cabinet has therefore adopted the following provisions which are herewith promulgated.

#### Part I

#### *Foundations of Home Rule*

1. (1) The municipalities muster the community energies for the purpose of fulfilling the public tasks of each locality.

(2) The municipalities are public territorial corporations. They administer their affairs on their own responsibility. Their activities must conform with the laws and the aims of national leadership.

2. (1) The municipalities are authorized to provide for the general

<sup>1</sup> *Deutsche Gemeindeordnung* of January 30, 1935 (*Reichsgesetzblatt*, I, p. 49).

<sup>2</sup> The term *Gemeinden*, although including all basic units of local government (see *supra*, p. 232), is translated as *municipalities* throughout the text of this document.

welfare of their population and to preserve the historical and indigenous characteristics of each locality.

(2) The municipalities must discharge on their own responsibility all governmental functions within their area, unless these are assigned by explicit legal provision to other authorities or are taken over by them in accordance with legal regulations.

(3) State functions may be delegated by law to the municipalities to be discharged in accordance with special instructions. The municipalities must provide the personnel, administrative facilities, and funds required for fulfilling these tasks, unless the laws provide otherwise.

(4) New duties may be placed upon the municipalities by law alone; the rights of the municipalities may be curtailed only by legal provision. Central ordinances regulating the enforcement of such laws require the approval of the National Minister of the Interior.

3. (1) The municipalities are empowered to organize the administration of their own affairs through ordinances in so far as the laws contain no other provisions or expressly permit the adoption of municipal ordinances.

(2) Every municipality must adopt a basic ordinance,<sup>3</sup> which requires the approval of the supervisory authority. The basic ordinance must deal with those matters which are reserved for it according to the provisions of this act.

(3) Ordinances must be made public. They become effective the day after publication, unless another date is fixed. With the consent of the supervisory authority, a municipal ordinance may have retroactive effect.

4. The area of each municipality must be so laid out that the feeling of community and the social cohesion of the population are preserved, and the municipality's capacity of fulfilling its obligations is assured.

5. (1) An inhabitant of the municipality is one who lives in it. A citizen is one who possesses municipal citizenship.<sup>4</sup>

(2) A citizen must be ready at all times to devote his energies to the welfare of the municipality in an unpaid (honorary) capacity.<sup>5</sup> He

<sup>3</sup> The function of the basic ordinance (*Hauptsatzung*) may be compared with that of the charters of American municipalities, although the Municipal Act itself is in a way a blanket charter.

<sup>4</sup> Municipal citizenship has significance for municipal purposes only. As a result of the Third Reich's racial legislation, Jews are excluded from municipal citizenship as well as Reich citizenship.

<sup>5</sup> A municipal *Ehrenamt* (honorary office in the sense that it is an unpaid office) is not a sinecure but involves as a rule a substantial burden of work. The use of *Ehrenämter* is naturally most widespread in small *Gemeinden*; examples of *Ehrenämter* which one finds in almost every municipality are the following positions: part-time directing executive officers (*Beigeordnete*); councillors; *Beiräte* (see *supra*, p. 248); non-professional social workers. The holders of honorary offices are held accountable for their acts in the same way as are the professional staffs.

who has been appointed to render such service must show himself worthy of this demonstration of confidence by unselfish and conscientious performance of his duties; he must set a good example for others.

6. The mayor is the head of the municipality. His substitutes are the directing executive officers (*Beigeordnete*). The mayor and the directing executive officers receive their appointments through the confidence of Party and State. In order to insure harmony between the municipal administration and the Party, the delegate of the National Socialist German Workers' Party participates in certain matters. Continuous contact between the municipal administration and the citizens is guaranteed by the councillors, who as meritorious and experienced men assist the mayor through their advice.

7. The municipalities, as trustees of the national community, shall administer their property and their revenue conscientiously. It must be the supreme goal of their economy to preserve the soundness of their finances in the light of what the taxpayers can afford.

8. (1) Supervision over the municipalities is exercised by the State.

(2) This supervision protects the municipalities in their rights and insures the fulfilment of their duties.

## Part II

### *Names and Emblems*

9. (1) Cities are those municipalities so designated under the existing legal provisions. The municipalities may also continue to use designations relating to the historical past, the individuality, or the importance of the municipality.<sup>6</sup>

(2) The National Governor is authorized to bestow or alter designations after the municipality concerned has received a hearing.

10. The municipalities retain their old names. The National Governor after hearing the municipality may change its name<sup>7</sup> and give a name to a newly formed municipality. The same applies to names of certain sections of municipalities.

11. (1) The municipalities have their own official seals.

(2) The municipalities use their former coats of arms and flags. The National Governor may authorize a municipality to adopt a coat of arms and a flag. After the municipality concerned has received a hearing he may change its coat of arms or its flag.

<sup>6</sup> For example, *Hansestadt* Hamburg, *Nordseebad* Cuxhaven, *Hauptstadt der Bewegung* (Munich), *Reichsmessestadt* Leipzig, *Lutherstadt* Wittenberg.

<sup>7</sup> Thus the name of the municipality of Judenburg (Jewborough) has recently been changed.



*Part III**The Municipal Area*

12. (1) The area of each municipality consists of those parcels of land located within the boundaries of the municipality according to existing law. Disputes over boundaries are settled by the supervisory authority.

(2) Every parcel of land shall be part of a municipality. For special reasons<sup>s</sup> parcels of land may remain outside a municipality (exempt property, manorial precincts).

13. Municipal boundaries are subject to change if the public interest so requires. The same applies whenever municipalities are abolished or new ones are created, or parts of a municipality are declared exempt property.

14. (1) Proposed changes of boundaries must be presented by the municipalities to the supervisory authority in ample time beforehand.

(2) The supervisory authority may at any time take charge of the preliminary conferences.

(3) Agreements among municipalities in this matter (annexation agreements) are valid only when certified before the change of boundaries is effectuated.

15. (1) The National Governor pronounces the change of municipal area after the municipalities concerned have received a hearing. At the same time he fixes the date of the transfer and regulates the succession rights, the new local law and the administrative set-up in so far as necessary.

(2) The supervisory authority works out the details of the settlement among the municipalities concerned. Its decision establishes rights and duties, provides for the transition, and defines the influence of the transfer upon the properties affected. The supervisory authority takes care that the necessary corrections are entered into the land record, the water record, and other public records. It is empowered to issue certificates to the effect that private property rights have not been affected.

16. Necessary legal transactions arising from a change of municipal area are free from charges or court fees. The same applies to measures taken under sec. 15 (2).

<sup>s</sup> Permanent military training grounds under the control of the Ministry of War are often placed in the category of exempt property (*gemeindefreie Grundstücke*). That the act also mentions manorial precincts (see *supra*, p. 233) does not indicate an intention to restore the former manorial precincts in Prussia; but those manorial precincts owned by the government (model farms, etc.) may well continue to be *gemeindefrei*.

*Part IV**Inhabitants and Citizens*

17. (1) The inhabitants are entitled to make use of the public facilities of the municipality according to the existing regulations, and are obliged to share in the costs of government.

(2) Real estate owners and businessmen of the community who do not live in the municipality have in the same way the privilege of using those public facilities generally available for real estate owners and businessmen; they are obliged to contribute their share of taxes on the basis of property owned or business conducted within the municipal limits.

(3) These provisions apply also to corporations and associations.

18. (1) When necessary the municipality may, with the consent of the supervisory authority, require all properties located in its area to connect with the water supply, sewer, garbage disposal, street cleaning or similar systems required in the interest of public health (compulsory inclusion), and also may enforce the use of these establishments and of the public slaughter houses (compulsory usage).

(2) By municipal ordinance exceptions may be granted from compulsory inclusion and compulsory usage. Correspondingly, both may be limited to certain sections of the municipality and to specified classes of property or to certain groups of persons.

(3) The ordinance may provide for administrative fines up to 1,000 *Reichsmark* for the purpose of securing compliance, and authorize the municipality in cases of non-compliance to carry out the required measures itself, but at the expense of the person refusing to comply. The expenses thus incurred as well as the fines are collected according to the rules of administrative procedure.<sup>9</sup>

19. (1) Citizens of the municipality are those German citizens who are 25 years of age, who have lived in the municipality for at least one year, and who possess all civic rights.

(2) Full-time mayors and full-time directing executive officers become municipal citizens irrespective of the rule requiring one year of residence.<sup>10</sup>

(3) With the approval of the supervisory authority the municipality may grant municipal citizenship to inhabitants regardless of the above residence requirement.

<sup>9</sup> Cf. also *infra*, secs. 29-30.

<sup>10</sup> This provision illustrates the strong career tradition in the highest executive positions in so far as they are salaried, and the absence of the practice of earmarking such positions for "home town boys."

(4) Soldiers are not entitled to exercise municipal citizenship rights.

20. (1) Municipal citizenship is lost: first, as a consequence of moving away from the municipality; second, upon the loss of German citizenship.

(2) Municipal citizenship is forfeited: first, upon dishonorable loss of German citizenship or of civic rights;<sup>11</sup> second, as a result of express revocation according to this act.

(3) The municipality may announce publicly any forfeiture of municipal citizenship and state the reasons for it.

21. (1) The municipality may bestow honorary citizenship upon German citizens of outstanding accomplishments for the nation, for the State or for the municipality itself. Foreigners may be made honorary citizens only with the consent of the supervisory authority.

(2) With the approval of the supervisory authority the municipality may revoke an honorary citizenship because of unworthy conduct.

(3) The forfeiture of municipal citizenship carries with it that of honorary citizenship.

22. (1) The mayor appoints citizens to unpaid (honorary) positions.<sup>12</sup> He has the power to revoke the appointment at any time. Special provisions of this act apply to the positions of non-salaried mayors and directing executive officers as well as councillors.

(2) The forfeiture of municipal citizenship carries with it the cancellation of all honorary appointments.

23. (1) For important reasons a citizen may decline an honorary position or request his discharge from it. The following are considered important reasons: first, if the citizen holds an ecclesiastic office; second, if he is a civil servant and the proper authority certifies that his honorary activity would conflict with the fulfilment of his official duties; third, if he has already served in an honorary capacity for six years; fourth, if he has four or more minor children; fifth, if he serves as guardian for two or more children; sixth, if his business compels him to leave the community frequently and for long periods; seventh, if he has been ill for a long time; eighth, if he is over sixty years of age.

(2) The municipality decides whether or not an important reason is given. It may impose a fine of up to 1,000 *Reichsmark* upon a citizen who declines an honorary position or resigns from it without an important reason, and also deprive him of his municipal citizenship for up to six years. Such fines are collected according to the rules of administrative procedure.<sup>13</sup>

24. (1) Citizens holding honorary positions are under the duty of

<sup>11</sup> Civic rights are lost as a result of a court sentence pronouncing the accused guilty of a crime.

<sup>12</sup> Cf. also *supra*, sec. 5 and note 5.

<sup>13</sup> Cf. also *infra*, secs. 29-30.

official secrecy as are permanent servants of the municipality. They are not to take advantage of their knowledge of confidential matters. This applies also to those who no longer hold an honorary position.

(2) In cases of violation of this rule the municipality may resort to the power granted in sec. 23 (2).

25. (1) No citizen holding an honorary position may participate even in an advisory capacity in any matter where the decision can be of immediate advantage or disadvantage to himself, his wife, his relatives up to the third degree, his in-laws up to the second degree or to a person represented by him according to law or by power of attorney. This applies also: first, if the citizen has given an expert opinion save in an official capacity or has been otherwise involved in the matter; second, if he is in the employment of someone who has a special personal or economic interest in the matter. The rule, however, is not applicable if the citizen is involved merely as a member of a profession or calling, or of a group of the population whose common interests are affected.

(2) The mayor gives a final decision as to the application of this rule. Should he himself be involved, the decision rests with his senior substitute.

(3) Whoever may not take part in the deliberation must leave the conference room.

26. Non-salaried mayors and directing executive officers as well as the councillors are under a special duty of honor to serve the municipality faithfully. They are not entitled to represent others against the municipality, unless they do so as representatives by law. This applies also to other citizens holding honorary positions in so far as the individual matter bears upon their official duties. Final decision about the application of this rule is left to the mayor, or, should he himself be involved, to the supervisory authority.<sup>14</sup>

27. (1) The basic ordinance may provide for reasonable allowances to cover the expenses of a non-salaried mayor, senior executive officer and treasurer.

(2) Others holding honorary positions are entitled only to the reimbursement of their actual expenses including a compensation for loss of income owing to their absence from work, but not exceeding the amounts granted to witnesses by the courts. Standard rates may be fixed in the basic ordinance.

(3) These claims are not transferable.

28. (1) The basic ordinance may provide that citizens who have conscientiously administered an honorary office for at least twenty years can receive the distinction of an honorary title.

<sup>14</sup> As to the permanent officials, their duty of fidelity has the same implications, but derives directly from their civil service status, requiring therefore no special mention in this act. Cf. also *infra*, sec. 38.

(2) With the approval of the supervisory authority the municipality may revoke the honorary title because of unworthy conduct.

(3) The forfeiture of municipal citizenship carries with it that of the honorary title.

29. (1) A remonstrance may be raised against any decisions of municipal authorities which concern: first, the right to use the public facilities; second, the imposition of administrative fines and of the costs arising from measures to be carried out at the expense of a citizen;<sup>15</sup> third, the acquisition, loss, or forfeiture of municipal citizenship; fourth, the infliction of penalties in general.

(2) Remonstrances shall be filed with the mayor within two weeks after the decision has been handed to the citizen. The remonstrance is considered raised in time if filed within two weeks with the municipal agency which has made the decision.

(3) The remonstrance has postponing effect unless the decision states otherwise.

30. (1) The remonstrance requires a decision by the mayor; if he rejects it, the matter may be brought before the administrative courts.<sup>16</sup>

(2) The suit can only be based on the ground that the decision does not accord with the laws<sup>17</sup> and harms the plaintiff.

(3) Every decision must contain a reference to these remedies.

31. (1) In cases of removal from honorary positions, remonstrance must be made within two weeks after the decision has been handed to the citizen.

(2) The remonstrance requires a decision of the supervisory authority, which is final.

(3) Sec. 29 (3) applies correspondingly.

## *Part V*

### *Municipal Administration*

#### *Chap. I*

##### *The Mayor and the Directing Executive Officers*

32. (1) The mayor conducts the administration under his full and exclusive responsibility, except as sec. 33 states otherwise.

(2) In city counties<sup>18</sup> the mayor is called *Oberbürgermeister*.

<sup>15</sup> Cf. *supra*, sec. 18 (3).

<sup>16</sup> These courts are not municipal agencies. The higher administrative courts are composed of lifetime appointed members and fully independent of the executive hierarchy. Administrative courts are not subject to any instructions. Cf. Rudolph E. Uhlman and Hans G. Rupp in *Illinois Law Review*, vol. 31 (1937), pp. 847 ff., 1028 ff.

<sup>17</sup> This formulation includes cases of abuse of discretionary powers.

<sup>18</sup> Cf. *supra*, p. 236.

33. (1) In order to insure harmony between the municipal administration and the Party, the delegate of the National Socialist German Workers' Party participates, apart from the appointment and recall of the mayor, the directing executive officers, and the councillors (secs. 41, 45, 51, 54), in the following decisions of the mayor: first, the issuance of the basic ordinance requires the approval of the Party delegate; second, honorary citizenship and honorary titles may be granted or revoked only with his consent.

(2) When the Party delegate refuses to concur with the mayor, he must give his reasons in writing within two weeks after the mayor has requested his decision. If the matter concerns the basic ordinance, the Party delegate must state the provisions disapproved by him, otherwise his approval is considered granted. Should further conferences or correspondence between the Party delegate and the mayor fail to bring about an agreement, the mayor must request the decision of the supervisory authority, in city counties that of the National Governor. In the case of the basic ordinance, the National Governor must have the approval of the National Minister of the Interior for any final decision overruling the recommendation of the supervisory authority. The decision of the National Governor is binding upon the supervisory authority.

34. (1) The mayor is assisted by the directing executive officers (*Beigeordnete*) as his deputies. Their number is determined in the basic ordinance.

(2) In city counties<sup>18</sup> the senior executive officer is called *Bürgermeister*. In cities the directing executive officer in charge of the financial administration has the title of city treasurer (*Stadtkämmerer*), while the others have titles indicating their particular functions (*Stadtrechtsrat*, *Stadtschulrat*, *Stadtbaurat*, etc.).

35. (1) The general substitute of the mayor is the senior executive officer. The other directing executive officers act as general substitutes for the mayor only if the senior officer is not available; their rank of representation is based upon their service seniority in the municipality, unless the mayor decrees otherwise in writing.

(2) The remaining directing executive officers represent the mayor only in their individual branches of administration. The mayor may reserve any matter for his own decision.

(3) The mayor may also designate other officials and employees to represent him in special matters, and authorize the directing executive officers to make corresponding arrangements in their individual branches of administration.

36. (1) The mayor represents the municipality.

(2) Declarations which are to have binding effect upon the municipality must be put in writing and be signed by the mayor's hand, who has to use his title. Should he not be available, the declaration must be signed by two officials or employees having authority to represent the municipality.

37. The mayor is the superior of all officials, employees, and workers of the municipality. He appoints and removes them.<sup>19</sup> In making appointments the classification plan and the budget<sup>20</sup> must be observed. Rights of the State concerning the appointment and removal of officials under other laws<sup>21</sup> are not affected by the foregoing provision.

38. Secs. 25 and 26 apply also to full-time mayors and directing executive officers.

39. (1) In municipalities having a population of less than 10,000 inhabitants, the mayor and the senior executive officer hold honorary positions. The basic ordinance may provide that the position of mayor or a directing executive officer be filled professionally.

(2) In municipalities with more than 10,000 inhabitants the position of mayor or that of a directing executive officer must be filled professionally. The basic ordinance determines which other positions must be filled in the same way.

40. In city counties<sup>22</sup> the mayor or the senior executive officer is to be appointed professionally and must possess the training required for the judicial or the higher administrative career. The supervisory authority may grant an exception to this rule. The basic ordinance may provide that other directing executive officers, especially the city treasurer, must have professional qualifications.

41. (1) Vacant full-time positions of mayor and directing executive officer must be advertised before they are filled by the municipality. All applications received are to be sent to the Party delegate, who after secretly conferring with the councillors nominates up to three candidates. In the case of a directing executive officer he must give the mayor an opportunity to express his opinion of the candidate.

(2) In submitting his nominations together with all the applications the Party delegate proceeds as follows: first, if the vacancy concerns the position of mayor, senior executive officer or treasurer in cities of more than 100,000 inhabitants, the folder is sent through the super-

<sup>19</sup> Subject to the provisions of the general civil service law and the collective working agreements governing the status of the employees occupying their positions on a contractual basis. Cf. *supra*, p. 270. On the latter group cf. Hans Heitmann, *Jahrbuch für Kommunalwissenschaft*, vol. 5, I (1938), pp. 1 ff.

<sup>20</sup> The budget gives a detailed specification of the available positions (budgetary positions).

<sup>21</sup> Cf. *supra*, p. 270 and note 106.

<sup>22</sup> Cf. *supra*, p. 236.



visory authority to the National Minister of the Interior; second, in the case of the position of another directing executive officer in cities of the above class and in the case of the position of mayor and directing executive officer in other city counties,<sup>22</sup> the folder is sent through the supervisory authority to the National Governor; third, in the case of the position of mayor and directing executive officer in cities belonging to a rural county,<sup>23</sup> the folder is sent through the supervisory authority to the higher supervisory authority,<sup>24</sup> and for all remaining municipalities to the supervisory authority.

(3) If the proper authority concerned with the matter approves of a nomination, the municipality appoints the candidate. Otherwise new nominations must be submitted. If no new nomination finds the approval of the proper authority, the latter selects a candidate, whom the municipality must appoint. The same applies if nominations are not made within the period of time specified by the proper authority.

(4) Vacancies in the position of unpaid mayor or directing executive officer need not be advertised. The proper authority may permit a municipality to proceed without advertising a vacancy in a position mentioned under (2). Otherwise the regulations given in (1) to (3) apply correspondingly.

(5) Nominations are to be kept confidential until the proper authority according to (2) has made its decision.

42. (1) The position of mayor or directing executive officer may not be occupied: first, by a salaried official in the service of the State, a municipality or another public corporate body; second, by an employee or worker in the service of the municipality; third, by an employee or worker of enterprises or establishments in which the municipality has a controlling influence; fourth, by an employee of the health insurance system; fifth, by a clergyman.

(2) These rules do not apply to officials, employees and workers of the first four categories mentioned under (1) in so far as they have been given leave of absence for the purpose of filling the position of full-time mayor or directing executive officer until their appointment becomes irrevocable according to sec. 45. The supervisory authority may grant an exception in order to enable an official, employee or worker of the first four categories to accept the position of unpaid directing executive officer.

43. (1) The mayor and the directing executive officers may not be related to each other up to the third degree or be in-laws up to the second degree. In municipalities with less than 1,000 inhabitants the supervisory authority may grant an exception.

<sup>23</sup> Cf. *supra*, p. 236.

<sup>24</sup> Cf. *supra*, p. 259.

(2) In case these officials become related to each other during their term of office, one of them must resign. If one is a full-time mayor, the obligation to resign rests with the other. If one is a full-time directing executive officer and the other a part-time one, the latter has to tender his resignation. In other cases the younger must resign if no agreement can be reached.

44. (1) Full-time mayors and directing executive officers are appointed for twelve years. They must accept a reappointment for the same period, unless less favorable conditions are offered. Should they fail to meet this obligation they are to be discharged upon the expiration of their term.

(2) The basic ordinance may provide that full-time mayors and directing executive officers can be reappointed for life.

(3) Unpaid mayors and directing executive officers are appointed for six years. They remain in office until their successors are installed. Reappointment is admissible.

45. (1) The proper authority according to sec. 41 (2) may revoke the appointment of a mayor or directing executive officer until the close of their first year of office. For positions of the first category under sec. 41 (2) the National Governor must be invited to express himself on the matter. The same applies to the Party delegate for position of the third category under sec. 41 (2); cases of disagreement require a decision of the National Governor.

(2) The proper authority may declare the appointment final even before the close of the first year of office.

(3) The National Minister of the Interior is authorized to define the legal consequences of a revocation of the appointment of full-time mayors and directing executive officers. He may prescribe that those who previously held a position in the service of the State, another municipality or a union of municipalities must be taken back into their former position, unless grounds exist which would generally preclude the appointment to an official position.

46. Mayors are sworn in by an officer of the supervisory authority before taking office; directing executive officers are sworn in by the mayor.

47. The basic ordinance may provide that the mayor, directing executive officers and councillors wear official attire or insignia of office on ceremonial occasions.

### *Chap. 2*

#### *The Councillors*

48. (1) It is the duty of the councillors to keep the municipal administration in close touch with all groups of the citizenry. They must advise

the mayor on their own responsibility and uphold his measures among the population. In their activities they are to be guided solely by the thought of preserving and promoting the common weal.

(2) In cities the councillors have the title of *Ratsherr*.

49. The basic ordinance determines the number of councillors, which may not exceed 12 in municipalities with less than 10,000 inhabitants, 24 in other cities belonging to a rural county,<sup>25</sup> and 36 in city counties.<sup>26</sup>

50. The Party delegate is not a councillor. He may take part in the deliberations of mayor and councillors if a matter is concerned in which this act entitles him to participate—sec. 33 (1); in these cases he must be invited to the meeting.

51. (1) The Party delegate selects the councillors in agreement with the mayor. In making the appointment, he is to take into account national reliability, qualifications, and reputation, and must consider personalities whose activities give the municipality its special significance or who exert an important influence upon the life of the community.

(2) Civil servants, employees and workers of the municipality and civil servants of the supervisory authority may not be appointed councillors. The supervisory authority may grant exceptions from this rule.

52. (1) Councillors are appointed for six years. Reappointment is permitted.

(2) In case of a vacancy arising before the expiration of the term, a substitute is appointed for the remaining period.

53. Councillors hold honorary positions. The mayor pledges them to the conscientious fulfilment of their duties and swears them in.

54. Councillors who did not or do no longer satisfy the requirements of sec. 51 must withdraw. The decision rests with the supervisory authority upon consultation of the Party delegate. If no agreement can be reached, the National Governor gives a decision.

55. (1) The mayor is obliged to confer with the councillors on all important matters. He must consult them: first, before boundaries are changed; second, before an honorary citizenship or honorary titles are granted or revoked; third, before a municipal citizenship is declared forfeited; fourth, before municipal ordinances are adopted, amended, or repealed; fifth, before taxes or rates are fixed; sixth, before the municipality assumes new duties beyond the legal requirements, especially in the case of creating or expanding establishments or economic enterprises of the municipality, or participating in similar undertakings; seventh, before changing the legal form of municipal enterprises or economic enterprises in which the municipality has a controlling influence; eighth, before taking measures affecting the property of the municipality, especially the acqui-

<sup>25</sup> Cf. *supra*, p. 236.

<sup>26</sup> Cf. *supra*, p. 236.

sition, sale or mortgaging of real estate, or the making of gifts and loans, in so far as these transactions are not regularly recurring in the conduct of the municipal administration; ninth, before municipal assets dedicated to a special purpose are merged with free municipal assets, or the legal use of assets dedicated to a special purpose is changed; tenth, before debtors of the municipality are released or such claims are settled out of court, in so far as these transactions are not matters regularly recurring in the conduct of the municipal administration and the amounts are of small pecuniary importance; eleventh, before loans are taken, guaranties are given, or obligations resulting from indemnity declarations and other similar measures are incurred; twelfth, before expenditures not provided for in the budget are made, or measures are taken through which the municipality might incur obligations not covered in the budget, provided the amounts are small; thirteenth, before a law suit of great importance is brought.

(2) If the matter admits of no delay the mayor may proceed without consulting the councillors; in this case he must at the next meeting inform them of the arrangements made.

56. (1) The mayor summons the councillors to the meetings at a reasonably early date and announces the agenda.

(2) The mayor states in every case whether the meeting is to be held as a public or a secret session. The agenda of a public session are to be brought to the attention of the citizenry.

(3) The directing executive officers take part in the meetings. The mayor may assign certain civil servants or employees of the municipality to attend a meeting and may also invite experts.

(4) The councillors are obliged to attend the meetings unless they are excused by the mayor.

57. (1) The mayor opens, conducts, and closes the meetings with the councillors. He sees to it that the discussion is confined to the affairs of the municipality.

(2) He maintains order in the meetings and is entitled to take all measures necessary for this purpose. Upon demand of the mayor, the individual councillors must express themselves with reference to the particular subjects under discussion. They are obligated to state their views if their opinions differ from that of the mayor. Councillors do not vote.

(3) A written record must be prepared giving the essential contents of the deliberations. Should councillors disagree with the mayor, their views must be laid down in the record. In addition, every councillor is entitled to have his views entered into the record. The record of each meeting must be signed by the mayor and two councillors designated by him.

*Chap. 3**Advisers (Beiräte)*

58. The basic ordinance may provide for the appointment of advisers to be assigned to special branches of the municipal administration. Besides councillors, other especially qualified citizens can serve as advisers. Advisers are appointed by the mayor.

59. The meetings with the advisers are not public. The mayor may delegate the chairmanship to a directing executive officer. Otherwise the provisions of secs. 56 and 57 apply correspondingly.

*Part VI**Municipal Economy**Chap. 1**Property of the Municipality*

60. (1) All municipal property must be administered diligently and economically. The largest possible return shall be realized at the lowest possible cost.

(2) The municipal property is to be maintained from the current revenue provided in the ordinary budget.

(3) The funds required to meet repair or replacement costs incurred as a consequence of the age, usage, or depreciation of municipal property, or to provide for the enlargement of municipal enterprises in case of growing demand must be accumulated from current revenue (replacement and enlargement reserves).

61. (1) Municipalities shall acquire property only in so far as it is necessary for the discharge of their proper functions, or will become necessary in due time.

(2) Property may be bought only from the current revenue provided for in the ordinary budget or from reserves accumulated for this purpose from the same source over a period of years. Property may be bought from loans taken up by the municipality only in a case of an extraordinary need which could not have been foreseen or where, for other urgent reasons, the municipality was unable to accumulate reserves for this purpose.

62. (1) Municipalities may sell property not needed within foreseeable time.

(2) The consent of the supervisory authority is required: first, if municipalities wish to dispose of property without recompense; second,

for sales or exchanges of municipal real estate or real property rights; third, for the sale of municipal property having a particular scientific, historical, or artistic value, especially archives and parts of archives, as well as other measures materially affecting such property.

(3) The National Minister of the Interior may exempt from this rule transactions of the first two categories mentioned under (2) in so far as they are regularly recurring in the conduct of the municipal administration and do not exceed defined rates of value.

63. Proceeds from sales of municipal property must be paid into a property maintenance account, or be used for the extraordinary amortization of loans. Only as an exception, and within the bounds of diligent financing, may the proceeds be appropriated for the reduction of the amount of loans required by the extraordinary budget or for covering deficits from previous fiscal years.

64. For the management of municipal forests the existing law remains in effect.

65. (1) For the use of municipal property to the profits of which other persons are entitled instead of the municipality (*Gemeindegliedervermögen*) the existing provisions and customs remain in force.

(2) Free municipal property may not be transformed into property described under (1).

66. (1) Endowments made to the municipality shall be administered according to this act, unless the donor stipulates otherwise or other laws contain special provisions. Separate accounts must be kept for endowments, and investments be made in such a way that the funds are available for the purpose of the endowment.

(2) If the accomplishment of the purpose of the endowment has become impossible, or if the endowment endangers the general welfare, the provisions of sec. 87 of the Civil Code apply.<sup>27</sup> The municipality is authorized to alter the purpose of the endowment or to dissolve the endowment, subject to the approval of the supervisory authority.

## Chap. 2

### *Economic Activity of the Municipality*

67. (1) Municipalities may organize economic enterprises or materially enlarge them only in the following cases: first, if such enterprises are justified by their public purpose; second, if they accord, in character and size, with the municipality's financial capacity and correspond to the expected demand; third, if they meet a need which is not, or cannot be, met more effectively or more economically in another way.

<sup>27</sup> Sec. 87 of the National Civil Code deals with the dissolution and the change of purpose of endowments.

(2) These rules do not apply to the following: first, municipal enterprises required by law; second, municipal establishments in the fields of education, physical culture, public health, and public welfare. Such enterprises and institutions must, however, also be managed economically.

(3) Municipalities may not engage in banking.<sup>28</sup>

(4) For municipal savings banks the existing law remains in effect.  
68. If the municipality intends to organize or materially enlarge an economic enterprise, it must inform the supervisory authority at a reasonably early date, at least six weeks before work is begun or contracts are awarded. The report must show that the project is in accordance with the legal provisions and that the covering of the expense is insured in fact and in law.

69. (1) Municipalities may participate in other economic enterprises only in accordance with the rules of sec. 67, and only in a form by which the liability of the municipality is limited to a fixed amount. Sec. 68 applies correspondingly.

(2) This rule is not applicable to the participation of municipalities in a joint administrative authority for specific purposes (*Zweckverband*) composed exclusively of public bodies.<sup>29</sup>

70. (1) The mayor represents the municipality in the stockholders meeting or the corresponding organ of the enterprises in which the municipality has a share. He may assign officials or employees of the municipality to represent the municipality in his place; such officials or employees must follow his instructions.

(2) This rule applies also in case the municipality is entitled to appoint members of the board of directors or other organs of the enterprise.

(3) Should officials or employees of the municipality be held liable as a consequence of discharging functions of the above nature, the municipality shall indemnify them, provided that they have not caused the damage intentionally or by gross negligence. Officials or employees who have acted according to instructions are entitled to be indemnified in any case.<sup>30</sup>

71. (1) Representatives of the municipality in the board of directors or another organ of an enterprise in which the municipality or a union of municipalities has a share of at least 75 per cent, may vote for the issuance of bonds or the acceptance of credits only with the consent of the supervisory authority.

<sup>28</sup> This provision does not apply to municipal savings banks; cf. *infra*, (4) of the same section.

<sup>29</sup> Cf. *supra*, pp. 238 ff.

<sup>30</sup> These rules define the personal liability of officials and employees toward the municipality only for the cases mentioned.



(2) If the enterprise is controlled by several municipalities which are not subject to the same supervisory authority,<sup>31</sup> the next higher supervisory authority<sup>32</sup> designates a common supervisory authority for them.

(3) These rules apply also if it is intended for an enterprise controlled according to (1) to participate in another enterprise.

72. (1) Economic enterprises of the municipality shall insure a financial return to the municipal budget.

(2) The receipts of each enterprise shall at least cover all expenditures and make possible appropriate reserves. The expenditures include taxes, payment of interest and principal on loans incurred for purposes of the enterprise, payment of interest, according to commercial usage, on working stock owned by the municipality and utilized by the enterprise, and adequate compensation for services rendered by other enterprises or administrative departments of the municipality.

73. In the case of an economic enterprise lacking the competition of private enterprises of the same kind, utilization of its services may not be based on the condition that other services be also accepted from the same enterprise.

74. (1) The management of each economic enterprise established as a branch of the municipal administration must be regulated by a municipal ordinance.

(2) Advisers (*Beiräte*) must be appointed for every enterprise of this character. It is permissible to appoint common advisers for several such enterprises. Especially experienced citizens shall be selected for this office.

(3) The budgeting, the financial administration and the accounting of each enterprise must be organized so as to facilitate a separate analysis of the management and its results.

75. The consent of the supervisory authority is required for reorganizing a municipal enterprise into a municipally controlled private corporation or company.

### *Chap. 3*

#### *Municipal Indebtedness*

76. (1) Municipalities may avail themselves of loans and other credits (except temporary credits) only according to the provisions of the extraordinary budget. The total amount of loans designed to cover the expenditures of the extraordinary budget according to the budget ordinance requires the consent of the supervisory authority. This consent is valid only in so far as every single loan included in the total is ap-

<sup>31</sup> This would be the case if one or more municipalities are city counties, the others not; cf. *supra*, p. 239.

<sup>32</sup> Cf. *supra*, p. 259.

proved by the supervisory authority; it shall be refused if it is apparent that the requirements for the particular loans are not met.

(2) The consent given under (1) ceases to be effective at the close of the fiscal year, irrespective of the provision of sec. 87.

77. (1) Borrowing is permissible only to cover extraordinary and urgent expenditures which cannot be met in any other way. If it can be foreseen that the amounts required for interest and capital payments will not be balanced by additional revenue or decreased expenditures due to the project to be financed by the loan, the municipality must show that these payments will not exceed its financial ability. As a rule this shall be assumed to be proved if the municipality, before borrowing the money, has accumulated a substantial amount from the current revenue of the ordinary budget for the purpose of covering part of the costs of the project for which the loan is required.

78. (1) Each loan within the total for which consent has been given according to sec. 76, as well as all transactions by which the municipality assumes obligations of guaranty or indemnification or of giving other securities, must be submitted to the supervisory authority for approval.

(2) The foregoing provision applies also to transactions which in spite of different legal forms have the same economic effect as those named in (1).

(3) Approval is not necessary in the case of transactions regularly recurring in the conduct of municipal administration, except for transactions by which obligations are assumed toward foreigners or in a currency other than the national currency. All loans must, however, be submitted for approval without exception.

79. The municipality may not give special securities to the person or persons who lend the money. The supervisory authority may grant exceptions from this rule where it is customary to give securities.

80. (1) For each loan the municipality must work out a retirement plan.

(2) The retirement plan must provide for retirement at the minimum amount stated in the conditions of repayment. Loans for covering recurring demands must be repaid until the particular demand recurs. As a rule, the smaller the immediate economic profit of the project financed by the loan is, the higher are the amounts for retirement to be figured.

(3) In the case of loans which fall due in the total amount or for which the retirement plan provides a method different from the original conditions of repayment, the retirement amounts shall be systematically accumulated and held available (retirement reserve fund).

81. (1) The municipalities may secure credits for meeting expenditures scheduled in the ordinary budget provided that these credits do not exceed the amount laid down in the budget ordinance and approved by

the supervisory authority. Only in exceptional cases may approval be given for an amount exceeding one-sixth of the ordinary budget revenue. Temporary credits which are not repaid at the time when a new approval is given must be taken into account. The approval ceases to be effective at the close of the fiscal year, irrespective of the provision of sec. 87.

(2) Approval of temporary credits may only be given if the amount needed cannot be covered from the reserve funds which the municipality is obligated to accumulate.

(3) Temporary credits must be paid back from the current revenue of the ordinary budget, otherwise within nine months. They may not be used for expenditures of the extraordinary budget.

#### *Chap. 4*

#### *Municipal Budgeting*

82. The fiscal year of the municipalities is identical with that of the State.<sup>33</sup> It is designated according to the calendar year in which it begins.

83. For each fiscal year the municipality must issue a budget ordinance containing: first, the budget; second, the municipal tax rates which shall be fixed anew for each fiscal year; third, the maximum amount of temporary credits; fourth, the total amount of loans required to balance the expenditures of the extraordinary budget.

84. The budget ordinance must be drawn up by the mayor and submitted to the councillors for discussion at a reasonably early date so that it can be presented to the supervisory authority not later than one month before the beginning of the fiscal year.

85. (1) The budget must contain all foreseeable expenditures and revenues of the fiscal year. Deficits from previous years must be included in the expenditures.

(2) The municipality may levy taxes and imposts under existing legal provisions if other revenues are insufficient to cover the expenditures.

86. (1) The budget ordinance requires the consent of the supervisory authority with regard to: first, the tax rates according to existing legal provisions; second, the maximum amount of temporary credits; third, the total amount of loans provided for in the extraordinary budget.

(2) The budget ordinance must be made public; in cases where approval under (1) is required, publication shall be made after the approval has been given.

(3) At the same time when the budget ordinance is made public the budget must be laid out for public inspection for one week.

87. If at the beginning of the fiscal year the budget ordinance has not

<sup>33</sup> The fiscal year runs from April 1 to March 31.

yet been made public the following rules shall apply: first, the mayor may make only those expenditures which are necessary under strictest standards of economy for the purposes (a) of maintaining the adequate operation of the municipal administration and of fulfilling the municipality's duties as prescribed by law and its legal obligations; (b) of continuing construction projects, contracts for the purchase of supplies and other services for which appropriations have already been made in previous budgets, in so far as these appropriations can still be used according to budgetary law; second, the mayor may continue to collect the fixed revenues and the revenues from municipal taxes according to the rates of the previous fiscal year, unless the law provides otherwise; payments made under this provision are to be credited to the amounts to be collected under the budget ordinance; third, the mayor may take up temporary credits within the approved limit of the previous year; fourth, the mayor may take up loans within the limits of the extraordinary budget of the previous fiscal year.

88. (1) During the fiscal year the budget ordinance may be altered only by a supplementary budget ordinance.

(2) The mayor must issue a supplementary budget ordinance if it appears in the course of the fiscal year: first, that even under strictest standards of economy a balance between the revenues and the expenditures can only be obtained through an alteration of the budget ordinance; second, that extraordinary expenditures to a considerable amount have to be met; sec. 91 (2) is not affected by this provision.

89. The budget ordinance is the foundation for the administration of all revenues and expenditures. The mayor must conduct the municipal administration in accordance with the budget ordinance. He may carry out budgetary appropriations only in so far and at such time as is required by the principles of public economy.

90. Projects the costs of which are to be covered wholly or in part by appropriations of the extraordinary budget may be started only if the revenues set aside for them have actually been received or if their receipt in due time is insured in law and in fact.

91. (1) Extraordinary expenditures not provided for in the budget may only be made with the approval of the mayor or the directing executive officer authorized by him; the approval may be given only in cases of indispensable need.

(2) In so far as such expenditures fall under the extraordinary budget, they may only be made after the budget ordinance has been altered.

(3) These rules apply also to measures which may result in financial obligations of the municipality for which no adequate appropriations are made in the budget.

92. Officials and employees of the municipality who are guilty of infringing the rules laid down in this chapter are held personally liable for the damages which the municipality suffers thereby.

93. Municipal officials and employees who, without the approval of the mayor or his substitute, authorize or effectuate an expenditure of the kind mentioned in sec. 91, or who take a measure which may result in financial obligations of the municipality not provided for in the budget, are personally liable for damages to the municipality, except (a) if the measure in question was taken to prevent an imminent danger to the municipality which could not be foreseen, (b) if the measure did not go beyond what was necessitated by the emergency, and (c) if the official or employee brings the matter immediately to the attention of the mayor or his substitute, together with a request for approval. The same rule applies to officials or employees who authorize or effectuate a payment or take a measure without notifying the mayor or his substitute, notwithstanding that they recognize or should have recognized that by such payment or measure the budget will be exceeded as a consequence.

### *Chap. 5*

#### *Municipal Treasury, Accounting, and Auditing Procedure*

94. (1) All matters concerning the municipal treasury are administered by the municipal treasurer. The treasurer must have a substitute.

(2) The administration of all municipal funds must be combined under one officer. Where a full-time treasurer is appointed, this responsibility rests with him; the supervisory authority may grant an exception.

95. The mayor must prepare an account of the revenues and expenditures of the fiscal year during the first quarter of the following fiscal year.

96. (1) The mayor submits the account to the councillors for deliberation. A record of the meeting must be kept. Each councillor has the right to enter a written statement of his observations into the record before the deliberations have come to a close. He can demand an adjournment for up to one week for the purpose of preparing such a statement. The councillor must justify his written statement at the next meeting of the councillors.

(2) In municipalities in which an auditing bureau exists, the mayor must first submit the account to this bureau.

97. The auditing bureau must examine the account, together with all the supporting documents, as to: first, whether the budget has been adhered to; second, whether all items of the account are properly explained and documented from the point of view of budgeting and ac-

counting; third, whether the law has been observed in the administration of the revenues and expenditures.

98. (1) If the audit reveals an error, the auditing bureau must report it to the mayor. The mayor orders the necessary explanations to be given.

(2) The auditing bureau states its findings in a final report.

99. (1) The mayor submits the account to the supervisory authority, together with the final report of the auditing bureau, the record of the meeting of the councillors, and the written statements of the councillors.

(2) After the account has been examined (sec. 103) the supervisory authority discharges the mayor in regard to the account, unless it is found that the principles of diligent management have been seriously disobeyed by the municipality. In the latter case the supervisory authority must see to it that the mayor takes the necessary measures, and that these are carried out.

(3) The decision discharging the mayor must be communicated to him, together with the results of the examination of the account. The mayor must inform the councillors of the discharge and the results of the examination.

100. City counties<sup>34</sup> must have an auditing bureau. Other municipalities may have such a bureau if there is need for it and the costs are in reasonable proportion to the scope of the municipal administration.

101. (1) The auditing bureau is subordinated directly to the mayor or the substitute designated by him.

(2) The mayor may appoint or dismiss the head of the auditing bureau only with the consent of the supervisory authority.

(3) The head of the bureau may not be related to the mayor, the directing executive officers, or the treasurer, up to the third degree, nor be related to them by marriage up to the second degree.

(4) The head of the bureau may not make any payments on behalf of the municipality nor authorize such payments to be made.

102. The mayor may assign to the auditing bureau further functions, especially: first, the current supervision of the fiscal conduct of the municipality and its municipal enterprises as well as the examination of accounts and supplies; second, the current examination of the management of the municipality's economic enterprises, the examination of the municipality's activity as shareholder or stockholder in enterprises which have a separate legal personality, and the examination of the accounts and the management of other enterprises which the municipality has stipulated for itself as a condition to participating in, or lending money to, such enterprises, or otherwise; third, the examination of the awarding of contracts; fourth, the examination of the entire municipal administration from the point of view of economy and efficiency.

<sup>34</sup> Cf. *supra*, p. 236.

103. (1) The National Minister of the Interior, in agreement with the National Minister of Finance, shall regulate by ordinance the super-local examination of municipal budgeting, conduct of the treasury, and accounting, as well as provide for the general examination of the entire municipal administration and of municipal enterprises from the point of view of economy and efficiency.

(2) For this purpose a public institution shall be created under the supervision of the National Minister of the Interior. In the meantime the existing system of super-local examination remains effective.

### *Chap. 6*

#### *Common Provisions for Chaps. 1-5*

104. (1) Transactions of private law which have been made without the approval of the supervisory authority as provided for in chaps. 1-5 are ineffective.

(2) Transactions made in disregard of secs. 73 and 79 are null and void.

105. (1) The National Minister of the Interior, in agreement with the National Minister of Finance, may by ordinance grant a general exemption from the rules contained in chaps. 1-5 concerning the consent of the supervisory authority, and may instead prescribe that the supervisory authority shall be notified in advance of the proposed measures.

(2) The National Minister of the Interior, in agreement with the National Minister of Finance, may issue ordinances regulating the financial administration of municipalities, especially: first, the incurring of loans and the assuming of other obligations within the meaning of sec. 78; second, the accumulation of reserve funds;<sup>35</sup> third, the adaptation of the budgetary procedure of the municipalities to that of the Reich; fourth, the recording and valuation of municipal property; fifth, the treasury and accounting system; sixth, the auditing system.

### *Part VII*

#### *Supervision*

106. The State supervises the municipalities in order to insure that their activities conform with the laws and the aims of national leadership. The supervision shall be exercised in such a way that the initiative and the sense of responsibility of the municipal administration are strengthened and not diminished.

107. The National Minister of the Interior is the highest supervisory authority. He provides by ordinance which agencies of the government

<sup>35</sup> Cf. *supra*, pp. 262 ff.



are to operate as the higher supervisory authorities and which as the supervisory authorities.

108. The supervisory authorities may at any time request information about the affairs of the municipality. They are entitled to inspect the municipal administration, demand oral and written reports, and examine municipal files and documents.

109. The supervisory authority may annul decisions and orders of the mayor if they are in conflict with the laws or the aims of national leadership, and demand that measures taken under such decisions and orders be rescinded.

110. If the mayor fails to make decisions or give orders necessary for the fulfilment of the duties of the municipality, the supervisory authority is entitled to order that the mayor take the necessary measures within a specified time.

111. The supervisory authority may execute itself measures to be taken under secs. 108-110, in the place and at the expense of the municipality, or authorize a third party to carry out such measures.

112. The supervisory authority may appoint a commissioner to carry out all or some of the duties of the municipality at the municipality's expense, if and as long as the conduct of municipal administration makes it necessary and if the powers of the supervisory authority under secs. 109-111 are not sufficient for the purpose.

113. (1) The municipality may raise a remonstrance against an order of the supervisory authority within two weeks after the order has been received. The higher supervisory authority gives a final decision on the merits of the remonstrance.

(2) The remonstrance has a postponing effect, unless postponement would impair the general welfare. In the latter case the order of the supervisory authority shall contain a statement to this effect.

114. Except for the supervisory authorities mentioned in sec. 107 no other authority or agency is entitled to interfere with the conduct of municipal administration as provided in secs. 108 et seq.

115. (1) Any claims of the municipality against the mayor are brought by the supervisory authority. The costs of a suit are borne by the municipality.

(2) All contracts made between the mayor and the municipality require the approval of the supervisory authority except those based on fixed rates. Sec. 104 (1) applies accordingly.

116. (1) Any creditor wishing to enforce a judgment on a money claim against the municipality must apply to the supervisory authority for permission except if the claim is based on a right *in rem*. In its decision the supervisory authority must specify to what particular pieces of property the permission applies and at what time execution shall take

place. The execution shall be carried out according to the provisions of the Code of Civil Procedure.

(2) No bankruptcy proceedings may be taken against a municipality.

### *Part VIII*

#### *Concluding Provisions*

117. (1) The National Minister of the Interior may by ordinance delegate to subordinate authorities the powers reserved for the National Governor according to secs. 9-11 and 15.

(2) Where the National Governor does not hold the position of regional head of the Party, the regional head of the Party must be consulted in addition to the National Governor in cases to which sec. 45 (1) and sec. 54, last clause, apply. If an agreement between the National Governor and the regional head of the Party cannot be reached, the decision rests with the National Minister of the Interior.

(3) In Prussia, the responsibilities of the National Governor rest with the provincial prefects,<sup>36</sup> in the district of Hohenzollern with the district head.<sup>37</sup> The provisions under (1) and (2) apply correspondingly.

118. The Substitute of the Leader in Party Affairs designates the Party delegates within the meaning of this act.

119. The National Minister of the Interior may by ordinance: first, provide that the existing law shall remain in effect for particular municipalities for a limited period;<sup>38</sup> second, issue special provisions for properties exempt from the municipal area (manorial precincts);<sup>39</sup> third, provide that in municipalities other than cities the designations of mayor, directing executive officer, and councillor be replaced by other traditional designations; fourth, regulate the termination of office of those existing honorary organs of the municipality whose place is taken by the councillors under this act; fifth, designate those provisions of national and state legislation which are superseded by this act; sixth, adapt those provisions of national and state legislation which remain in force to the new law, and publish them in new form.

120. The National Minister of the Interior, in agreement with the National Ministers concerned, and after consultation with the highest authorities of the state government concerned, may issue ordinances providing for the creation of special unions of municipalities by amalgamating municipalities belonging to a county, throughout the Reich; he may assign to them municipal functions, and regulate the legal relations

<sup>36</sup> Cf. *supra*, p. 252.

<sup>37</sup> Cf. *supra*, p. 259.

<sup>38</sup> Cf. *supra*, p. 232.

<sup>39</sup> Cf. *supra*, p. 233.

of such unions. He may furthermore prescribe by ordinance the establishment of joint administrative institutions for several municipalities belonging to a county,<sup>40</sup> in order to insure an efficient conduct of administration.

121. (1) The National Minister of the Interior is authorized to elaborate the provisions of this act by ordinances. He may provide for transitional regulations deviating from the provisions of this act.

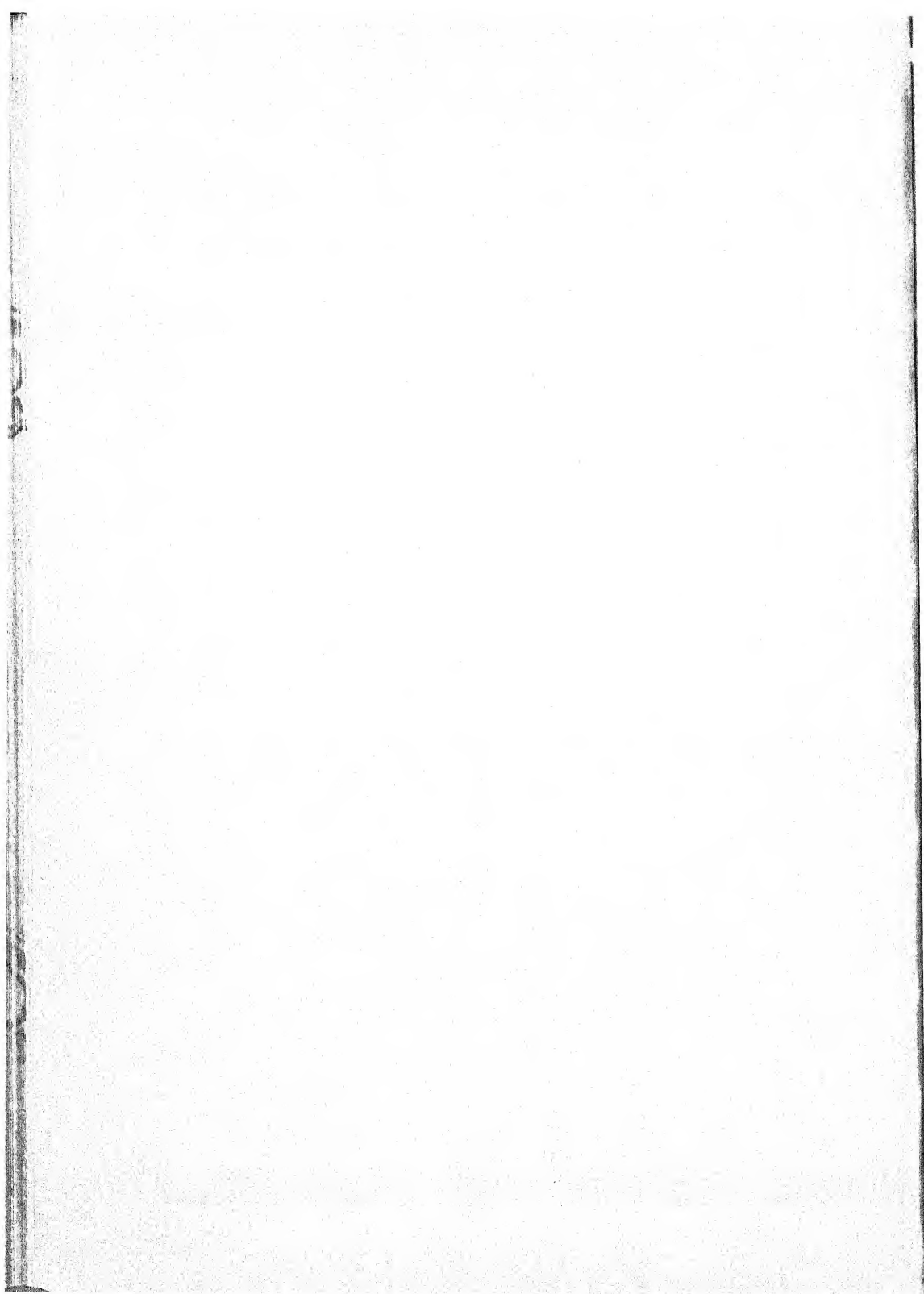
(2) In so far as these ordinances deal with economic enterprises and transactions of municipalities, the consent of the National Minister of Finance is required.

122. This act does not apply to the capital city of Berlin.<sup>41</sup>

123. The provisions of this act take effect on April 1, 1935.

<sup>40</sup> Cf. *supra*, pp. 238 ff.

<sup>41</sup> Cf. *supra*, p. 251.



# ITALY

BY

H. ARTHUR STEINER

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## Chapter IV

### ITALY

#### PART I. COMMUNAL AND PROVINCIAL GOVERNMENT IN ITALY

##### *Sec. I. Origins of the Law of March 3, 1934*

Italy's great cities, in a land devoted primarily to the pursuit of agriculture, have contributed far beyond the measure of their populations to the progress of economic activity and the arts throughout the world. There is in the peninsula no great metropolis comparable to New York, London, Paris, or Berlin; yet such cities as Rome, Milan, Florence, Genoa, Venice, and Turin have undeniably exerted powerful influences. Twenty-three Italian cities have populations in excess of 100,000,<sup>1</sup> which may be compared with the seventeen largest cities of neighboring France. Even though urbanization in Italy has not been quantitatively as great as in England or Germany, the urban *spirit* is strong and is deeply rooted. But however significant their cultural contributions of the past, Italian cities have lost their ancient glories, with the consequence that developments in the field of Italian local government have received scant attention. One obvious reason for this neglect may also be found in the slavishness with which the Italian system had, until recently, paralleled the better-known Napoleonic system of France. Within the past decade, as she has broken sharply with the past in other respects, Fascist Italy has devised a new and distinctive system of local government.

[For those unfamiliar with Italian may be listed the singular and plural forms of certain Italian words which appear in the text: *Azienda* (pl. *aziende*); *circondario* (pl. *circondari*); *compartimento* (pl. *compartimenti*); *consorzio* (pl. *consorzi*); and *giunta* (pl. *giunte*). The word *podestà* has no distinct plural form.]

<sup>1</sup> These, in order of population, are Rome, Milan, Naples, Turin, Genoa, Palermo, Florence, Bologna, Venice, Trieste, Catania, Bari, Messina, Verona, Padua, Taranto, Livorno (Leghorn), Brescia, Ferrara, Reggio di Calabria, Spezia, Cagliari, and Modena. (September 1, 1936.)



*Rise of municipal self-government.* Municipal science finds its modern origins in the cities of the Italian peninsula. During the twelfth century they foreshadowed the dawn of modern times by vigorously asserting their claims to, and generally winning, the right of self-government. So vital and significant was this development that Italian historians know the period as the "Age of the Communes." Municipal independence marked the final stage in the evolution of local particularism in Italy; yet, in a very real sense, without that development there could not have been created the conditions that subsequently led to political unification. The circumstances that preceded the rise of the urban spirit in Italy were paralleled in France, Germany, England, and elsewhere, but not before a century or more had passed.

Rural and isolated feudal principalities in medieval Italy proved unable to withstand the demand of the communes for self-government. Eager to take advantage of the markets of the Levant, Italian craftsmen poured into the cities, there to organize powerful guilds and to govern, first, their economic activities and, subsequently, their political life. Also eager to profit were the ship-operators and tradesmen to whom Genoa, Venice, and other maritime cities owed their revival and expansion. Men so modern, keen, and grasping as these could not be dissuaded by medieval political obligations from realizing their objectives. Between the active urban communities and the passive rural regions surrounding them, conflict inevitably set in and equally inevitable was the final victory of the municipalities. Some of the feudal rulers acceded to the urban demands in return for appropriate compensation; others were forced to yield under the sword. So emerged the independent city-state, with its own constitution and administration, its own army and navy, each with its keen, alert spirit, peculiar characteristics and unusual power.<sup>2</sup>

*Recent decline of self-rule.* Few vestiges of the late-medieval municipal tradition remain in contemporary Italy. Whether the early commune was a democratic institution or a paternalistic aristocracy, it was fully responsive to the needs of its economic categories. Government

<sup>2</sup> G. Volpe, *Questioni fondamentali sull'origine e svolgimento dei comuni italiani* (Pisa, 1904); J. Ficker, *Forschungen zur Reichs- und Rechtsgeschichte italiens* (Innsbruck, 1869); K. Hegel, *Geschichte der Städteverfassung von Italien* (2 vols., Leipzig, 1847; Italian trans., Turin, 1861); A. Solmi, *Il comune nella storia del diritto* (Milan, 1922).

was generally administered under supervision of a council chosen on some elective principle, even though the franchise was restricted and the guilds retained great authority. Terms of office were usually short, and public officers were constantly made aware—generally by the pressure of political factions and “parties,” but, if necessary, by revolution—of their direct responsibility to the citizenry. In the Fascist reorganization, all remnants of “electionism” have been destroyed and the principle of responsibility to the local citizenry is now rejected. Moreover, the early city was a highly individualistic corporation, jealous of its independence and traditional privileges, proud of its trade and distinctive crafts, conscious of the cultural and artistic achievements of its sons. That the Renaissance flourished under the stimulus of such inter-city competition and rivalry only heightened the sense of particularism. Communal government in pre-Fascist Italy reconciled this independence of the municipality with a moderate amount of central supervision. Naturally, in totalitarian Fascist Italy, where all forms of individual and corporate life are required to acknowledge the supreme will of the authoritarian state, there is no room for municipal self-government or autonomy. Yet pride of city is so deep-rooted that the Fascist régime has encountered unexpected difficulties in bringing about the complete subjection of the communes and of their local political machines.<sup>3</sup>

*Podestà then and now.* That *podestà* should be found in the present Italian communes appears anomalous. So powerful, in fact, was the force of ancient tradition that the Fascist régime revived that title of the administrators of independent medieval Italian cities to describe the modern officers whose present task is to govern the communes as agents of a strong central government. The “revival” of the *podestà* is one of name only. Between 1150 and 1155, *podestà* appeared almost simultaneously in Bologna, Siena, Ferrara, Imola, Reggio, and Faenza, and the institution was widely imitated throughout northern Italy during the thirteenth and fourteenth centuries. Medieval *podestà*, like their modern counterparts, were generally alien to the city in which they governed. But instead of serving as appointed functionaries of a central government, they were elected either by a municipal council or special electoral college, and were constantly held accountable to local author-

<sup>3</sup> This problem is well analyzed by H. W. Schneider, *The Fascist Government of Italy* (New York, 1936), pp. 15-17.

ities. Their terms, too, were short—seldom more than a year—in order that administrative officers might not make extravagant pretensions.<sup>4</sup>

*The provinces a late creation.* Where the present Italian communes generally trace their history in unbroken line for many centuries, the situation is otherwise with the provinces. The formation of provinces had to wait upon the abolition of the feudal principalities and the creation of a national union. The *Statuto* of the kingdom of Piedmont-Sardinia of 1848 contemplated the creation by law of communes and provinces.<sup>5</sup> Subsequently, the first *legge comunale e provinciale* of 1865 for the new kingdom of Italy adopted the Piedmontese system. Communal and provincial government in pre-Fascist Italy was modeled on French lines, with provinces corresponding to departments, *circondari* corresponding to *arrondissements*. As in France, each commune had its elected *sindaco* (mayor) and council, each province had its appointed prefect and elected council, and, despite the close supervision of the Minister of the Interior, the communes and provinces uniformly enjoyed a large measure of autonomy in matters of local concern. This system evolved gradually through successive enactments of 1889, 1898, and 1908, leading to the law of February 4, 1915.<sup>6</sup>

During his first three years, Mussolini's chief problems were political rather than administrative, and were solved through political pressures rather than through administrative channels. Marxist and left-wing members of communal councils were not removed by law but were left to the mercies of the Fascist squads. Suitable political foundations necessarily preceded administrative reorganization. There

<sup>4</sup> V. Franchini, *Saggio di ricerche su l'istituto del podestà nei comuni medievali* (Bologna, 1912); Volpe, *op. cit.*; Fr. Hertler, *Die Podestatsliteratur italiens im 12. und 13. Jahrhundert* (Berlin, 1910) are general surveys; for the cities of Tuscany in particular, see E. Sestan, "Ricerche intorno ai primi podestà toscani," in *Archivio di storia italiana*, VII (1924); 2. L. K. Born, "What is the Podestà?" in *American Political Science Review*, XXI, 1927, pp. 863-871, traces the origin of the office in medieval Italy.

<sup>5</sup> Article 74.

<sup>6</sup> There are many studies of the law of 1915, as amended by the law of December 30, 1923, no. 2839, which represented the cumulative experience of Italy until that time: F. D'Alessio and M. La Torre, *Commento alla legge comunale e provinciale* . . . (Naples, 1924); G. Trevisani, *La nuova legge comunale e provinciale commentata* (Pesaro, 1924); G. Amendola, *La provincia e l'amministrazione provinciale* (Rome, 1915); and his "La provincia nell'amministrazione dello stato," in V. E. Orlando, *Trattato completo di diritto amministrativo* (Milan, 1918), Vol. II; C. F. Ferraris, *L'amministrazione locale in Italia* (Padua, 1920); G. de Gennaro, *Manuale di legislazione comunale e provinciale* (Milan, 1929).

could be no recourse to extremes so long as Mussolini intended to work in coöperation with other parties, which was the case until January 3, 1925. Thereafter, the pace of the Fascist Revolution in the realm of public law and administration was greatly accelerated. Increasing use was made of the power to suspend and dissolve popularly-elected municipal councils; and, to maintain a more effective control over those remaining, there was established late in 1925 a communal and provincial "inspection service."<sup>7</sup> In some notable instances, "special" or "high" commissioners were despatched to take over local administrations.<sup>8</sup> Extraordinary measures of this nature were not so essential in the provincial administrations, since the prefects had, for some time, been directly appointed from Rome.

*Fascist reorganization of local government.* Communal makeshifts yielded to a permanent reorganization in 1926. By the law of February 4, 1926,<sup>9</sup> appointment of *podestà* was authorized in all communes with populations of less than 5,000, and in other communes where the communal council had twice been dissolved within two years. Provision was made simultaneously for the reconstruction of the local *consulte*, or councils, on new lines. Instead of being entirely popularly elected, two-thirds of their membership became appointive by the provincial prefect, upon recommendation of the communal syndical organizations. The transition to the new communal order was completed by the royal decree-law of September 3, 1926,<sup>10</sup> which extended the institution of the *podestà* to all communes, with the exception of Rome and Naples, where special régimes prevailed. Power to make appointments to the councils in larger communes fell to the Minister of the Interior, but, in all cases, after nominations had been made by legally recognized syndical associations. No important alteration in the structure of communal government has taken place subsequently.

Two years later, the less urgent problem of the provincial administrations was disposed of by two laws enacted on December 27, 1928.

<sup>7</sup> R. D.-L., October 23, 1925, No. 2113, *B. P.* [*Bollettino parlamentare*], II (March, 1928), 53.

<sup>8</sup> As in the case of the R. D.-L., August 15, 1925, No. 1636, appointing a "high commissioner" for Naples.

<sup>9</sup> Law No. 237, *G. U.* [*Gazzetta ufficiale*], February 18, 1926, No. 40; *B. P.*, I (June, 1927), 93.

<sup>10</sup> R. D.-L., No. 1910, *G. U.*, November 19, 1926, No. 267; *B. P.*, I (June, 1927), 105.

The first of these <sup>11</sup> reformed the administration of internal provincial affairs by establishing a rectory, under a president, with the function of assuming an initiative and of acting, in part, as the prefect's delegate in such matters. The second <sup>12</sup> modified the membership of the provincial administrative *giunta*, originally created in 1888 to assist the prefect in his capacity as a representative of the central government, to include a representative designated by the Secretary of the Fascist Party.

These basic legislative acts were accompanied by a large number of governmental decrees affecting the details of communal and provincial administration, the responsibilities of communal secretaries, the system of local finance and similar subjects. The confusion resulting from these numerous modifications in the basic law of February 4, 1915, produced the need for a new basic instrument. For these purposes, Parliament by law of March 31, 1932,<sup>13</sup> authorized the Government to issue, with necessary modifications, a revised and codified text (known as a *Testo Unico*) of the Law on Communal and Provincial Government. Taking full advantage of its authority, the Government issued an extensive royal decree of March 3, 1934,<sup>14</sup> which will probably continue for some time as the basic law on communal and provincial government.

Fascist reorganizations have not materially affected the basic levels of local administration. Nevertheless, whereas French administration functions on three inferior levels—the commune, *arrondissement*, and department (the canton being of no importance)—the Italian version

<sup>11</sup> Law, December 27, 1928, No. 2962, *B. P.*, II (December, 1928), 138.

<sup>12</sup> Law, December 27, 1928, No. 3123, *B. P.*, II (December, 1928), 147.

<sup>13</sup> Law, March 31, 1932, No. 359, *B. P.*, VI (April, 1932), 65.

In one article, its text reads: "The Royal Government may, with the advice of the Council of State, modify, integrate, coördinate, and assemble in a single text the provisions of the communal and provincial law of February 4, 1915, No. 148, the royal decree of December 30, 1923, no. 2839, the succeeding laws which have modified them, and measures adopted before December 31, 1931, relating to them."

<sup>14</sup> No. 383, *G. U.*, March 17, 1934, Spec. Sup. to No. 65; *B. P.*, VIII (April, 1934), 27-146. For comment, see P. Gilardoni and D. Dall'Alpi, *Codice dell'amministrazione locale* (Rome, 1934); M. LaTorre, *Commento al nuovo Testo Unico comunale e provinciale e alle norme complementari* (Naples, 1934); L. Macciotta and C. Vittorelli, *Commento teorico-pratico al nuovo T. U. della legge comunale e provinciale* (2nd ed., Terni, 1934); M. A. Paviolo, *Vocabolario legale amministrativo* (Cuneo, 1934); E. Presutti, *Istituzioni di diritto amministrativo italiano* (3rd ed., Vols. II and III, Messina, 1934); G. Zanobini, *L'amministrazione locale* (2nd ed., Padua, 1935).

of the Napoleonic system calls for but two. As the law of 1934 puts it tersely: "The Kingdom is divided into provinces and communes."<sup>15</sup> Fascists have sought to reconcile many of the old traditions with their authoritarian conceptions; hence, their reforms have been concerned, not so much with the territorial reorganization of the peninsula, as with the modification of administrative forms and controls, with a view to the greatest possible amount of central supervision. The Fascist reform was not as extreme as that of the National Socialists in Germany, where the *l nder* were almost completely destroyed, to be replaced by specially devised ethnic-economic regions.

### *Sec. 2. The Commune*

With a territory slightly more than one-half as large as that of France, Italy has only one-fifth as many communes. The number of these, which constantly varies as new communes are created or old communes combined, was 7,331 on December 31, 1934. As in France, the commune is the fundamental local government area, into which all the territory of the kingdom is divided. The term does not necessarily imply an urban population. Of the total of 7,331 communes, as shown in Table 1, 2,560 had populations of less than 2,000; that is, 35 per cent of the communes contained but 7.7 per cent of the total population of the country. Even though the remaining 92.3 per cent of the population is identified with communes of more than 2,000 inhabitants, it does not follow that these live in urban areas of that size. In general, however, when a commune attains a total population of 5,000, its life is likely to revolve around a populated center, or *capoluogo*, as large as many a mid-western American "town." Some 69.7 per cent of the total Italian population is identified with such communes, which accounts for a fundamental urban orientation among a population that is predominantly engaged in agricultural pursuits.<sup>16</sup>

The average commune covers an area of approximately 16 square miles, with a population of some 5,600. In its *capoluogo*, which may have one or two thousand inhabitants, are located the communal

<sup>15</sup> Law of March 3, 1934, Art. 17. All subsequent citations by article-number are to this law, except where noted.

<sup>16</sup> See Table 1. *Annuario statistico italiano*, 1935, p. 5, is the basis for these calculations.

TABLE I

ITALIAN COMMUNES, CLASSIFIED BY POPULATION, CENSUS APRIL, 1931  
(*Annuario statistico italiano*, 1935, p. 5)

Population range	Number of communes	Present population (total)	Percentage of total population
500 and less .....	169	59,683	0.1
501-1,000 .....	662	513,700	1.3
1,001-2,000 .....	1,729	2,580,953	6.3
2,001-5,000 .....	2,918	9,297,461	22.6
5,001-10,000 .....	1,181	7,989,720	19.4
10,001-20,000 .....	431	5,731,873	13.9
20,001-50,000 .....	177	5,151,717	12.5
50,001-100,000 .....	42	2,700,838	6.6
100,001-200,000 .....	11 <sup>a</sup>	1,418,159	3.4
200,001-500,000 .....	6	1,689,851	4.1
500,001-1,000,000 .....	4	3,035,633	7.4
Over 1,000,000 .....	1 <sup>b</sup>	1,007,083	2.4
Totals .....	7,331	41,176,671	100.0

<sup>a</sup> Modena (not included in the number given) attained a population of 100,065 on July 21, 1936.

<sup>b</sup> Since 1931, Milan has exceeded the 1,000,000 point; on August 21, 1936, it had a population of 1,122,140. The population of Rome on the same date was 1,184,875. Istituto Centrale di Statistica, *Bollettino mensile di statistica*, XI, No. 9. Ordinary supplement to *Gazzetta ufficiale*, 21 September, 1936, No. 219.

offices and headquarters. Smaller clusters of population, in the adjoining periphery, may enjoy a local autonomy as communal "fractions" or "boroughs" if their populations and financial resources are adequate to provide for the public services. In larger communes, as in Rome, the area of the commune may also be divided into "regions" or "quarters" if administrative convenience would thereby be served. With the single exception of Rome, which has the peculiar characteristics and qualities of a *Governatorato*, there is no official sub-classification of communes as villages, towns, or cities. Some of the communes have been permitted to retain the historic title of "city"; and, in fact, some of the smaller cities, with pride in their traditions, incorporate that title into their official name, as does the Città di Castello. But for all legal and administrative purposes, the "city" is a commune, and it is governed according to the standard pattern.



*Changing numbers of communes.* Under the Fascist régime, a consistent effort has been made to devise a system of communal government which, excluding obnoxious local particularism, would be more efficient and more responsive to the demands of the central authority. A superficial result of this has been a general reduction in the number of communes. These totaled 9,067 on December 31, 1921; their present number is slightly in excess of 7,300. Today there is observed a tendency to increase the number: for example, there were 7,311 communes on April 21, 1931, and 7,331 on December 31, 1934. For this there are two obvious explanations. First, as the land-reclamation program of the régime increases the habitable lands of the Kingdom, new provinces are organized, with appropriate new communes. For example, reclamation of the Pontine Marshes produced the province of Littoria with 28 communes, many of them new. Second, with the accumulation of experience, it is occasionally shown that an original consolidation of communes, theoretically designed to promote administrative efficiency, has had a contrary result; restoration of the independent communes is, in those circumstances, a natural remedy.

Many of the provisions of the fundamental law of March 3, 1934, guarantee a degree of flexibility in the territorial organization of the communes. Communes with populations of less than 2,000 may be united; and larger communes may be combined when their respective *podestà* reach an agreement upon the terms and conditions.<sup>17</sup> Short of complete unification of several communes, a type of administrative union may be accomplished by placing a single *podestà* in charge of as many as three of them.<sup>18</sup> Even where unification is produced, the combined communes may be permitted to retain a separate administration of their respective properties and of purely local affairs. This capacity for autonomous administration may also be enjoyed within a commune by a fraction with more than 500 inhabitants whose petition is approved by appropriate higher authorities.<sup>19</sup> Conversely, a borough or fraction within a commune which has more than 3,000 inhabitants, and which is able to provide adequately for the performance of the public services, may petition for status as a separate commune. These and

<sup>17</sup> Art. 30.

<sup>18</sup> Art. 38.

<sup>19</sup> Arts. 31-37.

other forms of territorial alteration require the sanction of a royal decree, proposed by the Minister of the Interior, with the concurrence of the Minister of Finance when financial affairs are settled by special agreement. Generally, the Fascist administration has been more willing to authorize such alterations than were its predecessors.<sup>20</sup> This flexibility is a significant characteristic of the system of local government as a whole.

*The office of podestà.* The focal center of communal government and administration is the *podestà*, who is at the same time the spokesman of the commune and the agent of the central government. This office, first created in February, 1926, for application only in communes of less than 5,000 inhabitants, was extended in September, 1926, to all communes.<sup>21</sup> Originally, the term of the *podestà*, and of his assistant, the *vice-podestà*, was five years; currently, the term of four years prevails. *Podestà* and *vice-podestà* may be suspended at any time by the prefect; and either may be removed by the appointing authority, which, in the case of *podestà* is technically the king, and in the case of *vice-podestà* the Minister of the Interior.<sup>22</sup>

In principle, each commune has its own *podestà*, although as many as three small communes may be entrusted to a single *podestà*; even in Rome, the basic principle is not disregarded, and the attributes of the *podestà* are conferred upon the governor. A *vice-podestà* is appointed in communes with populations of between 20,000 and 100,000

<sup>20</sup> The Ministry of the Interior began the periodic publication of these alterations in 1861: *Variazioni di territorio e di nome avvenute nelle circoscrizioni comunali e provinciali*. Vol. XI of the series (Rome, 1934) lists alterations made between October 16, 1930, and March 31, 1934.

<sup>21</sup> Law, February 4, 1926, No. 237, and Law, September 3, 1926, No. 1910, cited. An extensive literature has developed concerning the *podestà*, in addition to analyses found in standard manuals of administrative practice and those cited in note 14, above. E. Arduino, *Manuale del podestà*. . . (Brescia, 1926); A. Cappellini, *La guida del podestà* (Viareggio, 1926); G. Carollo d'Anna, *Il podestà nel governo del comune* (Foligno, 1926); G. Fassio, *Il podestà e le sue attribuzioni* (Milan, 1926); A. Guerra, *Il podestà, esposizione storica dell'istituto dalle origini ai tempi nostri* (Naples, 1926); S. Molinari, *Il podestà e la consulta municipale* (Milan, 1926); G. Sisto, *Il podestà*. . . (Bari, 1927); P. Ducceschi, *L'istituto del podestà*. . . (Viareggio, 1927); G. Castagnetti, *Il podestà e la consulta municipale* (Naples, 1928); R. Vuoli, *Il podestà e la consulta municipale nell'ordinamento giuridico del comune* (Milan, 1928). As their dates indicate, these works are primarily descriptive of the general institution; there is no Italian treatise which appraises, with any degree of critical insight, the actual practice of the office.

<sup>22</sup> Arts. 38, 40, 42, 49.

(and, in exceptional cases, in communes with 10,000 to 20,000 inhabitants) ; two *vice-podestà* are appointed if the population exceeds 100,000. Neither the *podestà* nor the *vice-podestà* receives compensation as such, although a representation allowance may be granted in unusual cases. Originally, it was intended that *podestà* should be at the disposal of a prefect, to be transferred from one commune to another within the same province; but in current practice, the *podestà* is appointed to a specific commune, with the presumption that his tenure there is to be more or less permanent.

*His powers.* The powers of the *podestà* fall into three categories. (1) In general, as the representative of the commune, he is responsible for the conduct of communal affairs, its representation for public purposes, the maintenance of its registers and records, and the signature of its official instruments.<sup>23</sup> (2) As the "communal administrator," he determines the organization of its offices and services, the compensation and legal status of its employees, the disposition of communal properties, the communal taxes, and decides, among others, "all matters which are appropriate to the commune."<sup>24</sup> (3) As an "officer of the Government," he performs specific duties imposed by law, assists the ministries of the national government in the performance of their local operations, and maintains a particular scrutiny over persons or conditions likely to endanger the public security.<sup>25</sup> The normal device through which these duties are fulfilled is the administrative ordinance, in the issuance of which he is given special power in the event of emergency. For these purposes the *podestà* is at all times subject to the supervision and control of his hierarchical superior, the prefect, who has authority to issue orders when the *podestà* fails to take required action, to suspend the *podestà*, or to entrust the communal administration to his special commissioner or agent.

*The communal council.* Before 1926, the local *sindaco*, or mayor, shared his legislative power with a popularly elected municipal council. With the establishment of the *podestà*, the emphasis in that relationship was entirely changed. Today the *podestà* assumes complete legislative and administrative responsibility, being advised by a communal

<sup>23</sup> Art. 52 (an enumeration of 15 functions).

<sup>24</sup> Art. 53 (an enumeration of 12 functions).

<sup>25</sup> Art. 54 (an enumeration of 5 functions).

*consulta*, or council. Under the law of 1934, councils were authorized in all communes with populations greater than 10,000, where the former minimum had been 20,000. Even with that substantial addition of 431 communes to the list, less than 10 per cent of the communes maintain a council.<sup>26</sup>

The precise size of a particular municipal council is fixed by decree of the provincial prefect,<sup>27</sup> subject to a general classification of communes according to population. (1) Large communes, with over 100,000 population, have a council of from 24 to 40 members; (2) communes with populations of between 10,000 and 100,000 have councils of from 10 to 24 members; and (3) when, in special circumstances, a smaller commune is granted a council, it has from 6 to 10 members.<sup>28</sup> In fixing the size of the council, the prefect is also directed to take account of the importance of its economic activities. Once the number of members has been determined, the prefect requests the legally recognized syndical associations of capital and labor within the commune to submit nominations, in keeping with the principle of economic representation. Formal appointments to the council are made by the prefect, and may be given to women who satisfy special conditions.<sup>29</sup> Although the council is appointed as a collective group for a term of four years, it may be suspended at the discretion of the prefect or dissolved by the Minister of the Interior.

*Council meetings and powers.* Meetings of the council are summoned at the discretion of the *podestà*, who frames the agenda and presumably has the exclusive initiative in deciding the questions upon which the advice of the council is to be had. The *podestà* may request advice upon any subject; but the law specifically defines sixteen subjects upon which advice must be sought, unless the council has been suspended or dissolved, or unless an emergency requires immediate action. These subjects include, generally, the questions upon which the *podestà* takes action in his capacity as the communal administrator, including communal contracts, sales, loans, and regulations for the use

<sup>26</sup> Communes with populations of less than 10,000 which are provincial chief-places, as well as other small communes with a particular economic importance, may also be granted a council.

<sup>27</sup> Art. 64.

<sup>28</sup> Art. 39.

<sup>29</sup> Arts. 65-68.

of public property. For purposes of defining the jurisdiction of the council, communes are classified in three categories: (1) communes with over 100,000 inhabitants; (2) communes with between 20,000 and 100,000 inhabitants, including also communes with a smaller population which happen to be provincial chief-places; and (3) communes with less than 20,000 inhabitants. The only effect of this is that councils in smaller communes may concern themselves with financial transactions so small in amount that they would be decided on a routine, administrative basis in the larger communes.<sup>30</sup> In no case, however, is the *podestà* required to conform to the advice given him; but if he adopts an independent course of action he is under obligation to make note of the disagreement for the record.<sup>31</sup> It is, therefore, clear that the communal council has none of the legislative or regulatory powers characteristic of city councils in the United States.

Dependent upon the *podestà*, and in fact responsible for the management of the routine affairs of the commune, is the communal secretary.<sup>32</sup> While the secretary is locally chosen, on the basis of special qualifications and examinations, he is formally appointed by the Minister of the Interior and registered on his rolls. While thus enjoying status as a "functionary of the state," the secretary is immediately responsible to the *podestà*, whose instructions he is obliged to observe. As the chief permanent civil service officer of the commune, his responsibilities vary widely from place to place, as local conditions affect the forms of municipal administration.

### Sec. 3. The Provinces

*The compartimenti.* A glance at a general map of Italy reveals the division of the kingdom into eighteen major regions known as *compartimenti*. Superficially, these appear comparable to the major departmental divisions of France, but the Italian *compartimenti* have neither legal personality nor autonomous institutions of government.

<sup>30</sup> Arts. 79-81.

<sup>31</sup> Art. 83.

<sup>32</sup> Arts. 41, 173 ff. For general comment, see E. Menna, *Amministrazione comunale* (Sancasciano Val di Pesa, 1928); O. Checchi, *I regolamenti dei comuni* (Empoli, 1928); A. Guerra, *Il segretario comunale funzionario di Stato* (Rome, 1929); E. Arduino, *Manuale del podestà e del segretario comunale* (Brescia, 1926), and other administrative manuals.

In the main, they represent the original kingdoms and principalities which existed before the unification of the kingdom of Italy—the former kingdom of Piedmont and the duchy of Tuscany, for example. While the *compartimenti* generally serve as territorial bases for the eighteen Courts of Appeal, and while they conveniently group the provinces of the kingdom for the administration of national law and the recording of statistics, they are no more than extra-legal groups of provinces. Each *compartimento* has from two to nine provinces, and it is to the provinces, as the intermediate level between the commune and the central authority, that attention must be directed. For, as suggested above, there are but two levels of Italian local administration as compared with three in France. Even the sub-prefecture, intervening between the province and the commune, was abolished early in 1927 in the only important *territorial* adjustment brought about by the Fascist régime.<sup>33</sup>

The *compartimenti* derive their practical importance from the fact that Italian provinces, corresponding to French *départements*, are smaller in area than the major French territorial divisions. But since the *de facto* existence of *compartimenti* over so long a period of time has served to create a *natural* linkage between the artificial provinces, there has been no movement toward formal and legal regionalism, as in France. Therefore, while they are technically not units in the regular local government system, the *compartimenti* deserve mention for their unifying influence.

*The provinces: number and size.* The number of Italian provinces has grown with the evolution of a unified Italy. At the time of the March on Rome (October 28, 1922), there were 75; but the number has been appreciably increased in the Fascist reorganization and today totals 94.<sup>34</sup> Of these, 81 are found on the peninsula, three on the island of Sardinia, nine on the island of Sicily, and one (Zara) across the Adriatic, on the Dalmatian coast. Nevertheless, all stand on the same basis, in law and practice, as integral parts of the kingdom. In population, the provinces exhibit great diversity: Naples, the largest, has

<sup>33</sup> R. D.-L., January 2, 1927, No. 1.

<sup>34</sup> Federazione Nazionale delle Province d'Italia, *Le provincie d'Italia nel primo quinquennio del regime fascista* (Rome, 1929); S. Giuliani, *Le 19 provincie create dal Duce* (Milan, 1928). The newest province is Asti, in the *compartimento* of Piedmont, created by R. D.-L., April 1, 1935, No. 297.

2,085,183 inhabitants; Zara, the smallest (far smaller than any other) has 20,324.<sup>35</sup> The disparity in areas, again with the exception of Zara, is not so apparent. In size, generally, the Italian provinces compare with the "surveyor's counties" of the American mid-western states.

*Organs of provincial government.* Provincial government is more complex than communal government, primarily because the dual character of the province, (1) as an area of national administration and (2) as an area of local government, is more obvious. In addition to representing the nation and performing its autonomous functions, the province maintains control over its communes, which vary in number from 270 in the province of Alessandria to two in the province of Zara.<sup>36</sup> For these reasons, a multiplicity of organs has been found necessary, whereas, by contrast, the single agency of the *podestà* is adequate for the communes. The chief officer of the province is the prefect, assisted by a prefectural council and a provincial administrative *giunta*, or commission, representing the national government and simultaneously supervising the administration of the internal affairs of the province and of its communes. For the administration of the province, as an autonomous institution of local government, there is a president (*preside*) and a rectory (*rettorato*).

*The prefect.* Between these various organs, however, there is no exact and definitive allocation of powers. While the president and rectory, for example, perform certain localized functions, there is no doubt of the primary power of the prefect or of his ultimate responsibility over *all* provincial affairs. Power is commensurate with the responsibility. The law of 1934 adequately describes this glorified position of the prefect:

The prefect is the highest authority of the State in the province. He is the direct representative of the executive power.

The prefect is the source of all provincial activity, which receives its initiative, coördination, and direction from him.

In conformity with the general instructions of the Government the prefect takes action to ensure a unified political direction in the performance of the various national and local functions within the province, coördinating the activities of all public offices and supervising the admin-

<sup>35</sup> Census, April 21, 1931.

<sup>36</sup> As of April 21, 1931. There is an average of approximately 80 communes per province.



istrative services, except those identified with the ministries of justice, war, marine, aeronautics and railways.<sup>37</sup>

This grant of general authority is supported by the conferment of special powers, including the emergency authority of the prefect to issue orders and regulations for the communes and province. It will be noted particularly that the prefect also aids in the performance of the functions of the national government administrations. Consequently, while he is under the immediate direction and control of the Minister of the Interior, he must also maintain contact with, and observe the instructions of, such ministries as Public Works, Finance, and Corporations when their functions are localized and require direct local administration.<sup>38</sup>

*Political position of the prefect.* The strategic position of the prefect, at the center of the hierarchy, makes him a highly important political functionary. Since the delicate task of "making" elections has now been assumed by other agencies, the rôle of the prefect has been somewhat altered in recent years. Politically, however, he is still responsible for the provincial press and for curbing activities of a "subversive" character. If for no other reason, *Il Duce* maintains a close contact with all prefects, occasionally summoning them to Rome, as individuals or in groups, for periodic *rapporti*, to receive his personal directions. The competing hierarchy of the Fascist Party arose in 1925 and 1926 to challenge the authority of the prefects. Represented in communes by local secretaries and in the provinces by federal secretaries, the party matched the *podestà* and prefects and, on occasion, actually struggled for political supremacy. Even today, the party *federale* may be better known than the prefect of the same province.

In his famous Circular to the Prefects, dated January 5, 1927,<sup>39</sup> Mussolini defined the relationship between the party and state hierarchies, while at the same time generalizing about the new status of the prefects. Six principles were proclaimed. (1) After reaffirming that

<sup>37</sup> Art. 19.

<sup>38</sup> G. Solmi, *La provincia nell'ordinamento amministrativo vigente* (Padua, 1935). Since the province is, for so many purposes, regarded as an administrative region of the national government, no special literature has developed; reference should be made to standard treatises on administration in general, as O. Ranalletti, *Istituzioni di diritto pubblico* (Padua, 1931).

<sup>39</sup> Text in *B. P.*, II (March, 1928), 60-62.

"the prefect is the highest authority of the state in the province," Mussolini declared that "all citizens, and above all those who have had the great privilege and honor of fighting for Fascism [the party members] owe respect and obedience to the highest political representative of the Fascist Régime [the prefect] and should coöperate, in subordination to him, to make his task more easy." Whether the *federali* have always observed this admonition is a highly moot question. (2) Remarking that the day of "squadrist" as practised by Fascist Black-shirts was past, Mussolini urged the prefects to assume the initiative in defending the régime "against those who would be traitors to the régime or who would weaken it." (3) Prefects were warned especially to prevent disturbance of the public order. (4) In order that the totalitarian régime might prove a complete success,<sup>40</sup> *Il Duce* warned prefects of the necessity of placing their own houses in order, to maintain a scrupulously honest administration, particularly over public funds. "All affairs of an administrative or financial character—from the communes to the syndicates," were accordingly commended to prefectural vigilance. This necessary warning was, in a sense, a confession of the administrative chaos which had theretofore prevailed. (5) Prefects were urged to protect and promote the activities of the military associations, of war veterans, war widows, and others, whose interests coincided with those of the régime. And (6) "the Fascist prefect is not the prefect of the demo-liberal days. Then the prefect was primarily an electoral agent. Now that there is no longer talk of elections, the form and figure of the prefect change." Accordingly, prefects were to perform more vigorously their functions as the source of provincial activity, to be more conscious of popular needs, and to maintain supervision over the new generation as it came to be organized in the *Balilla* and *Avanguardia*.

Since the Fascist Party claims an interest in precisely these questions, Mussolini's circular did not entirely settle the issue. This does not signify, however, a conflict between legal and extra-legal authority. In Italy, the Fascist Party is an organ of the state in precisely the same sense as is the Ministry of the Interior; and one of the reasons

<sup>40</sup> On October 28, 1925, Mussolini had proclaimed the totalitarian principle: "Everything within the State, nothing outside the State, nothing against the State." His circular to the prefects, accordingly, was a timely one.

which may have led Mussolini to confer upon the Secretary of the party an *ex officio* membership in the Council of Ministers, as of January 23, 1937, was an intention to promote an official, routine adjustment of jurisdictional controversies.<sup>41</sup> In legal principle, however, the provincial prefect overrules the party federal secretary.

*Organs that assist the prefect.* Three important agencies are identified with the prefect in his capacity as a representative of the national executive power: (1) the prefectural council, of two members in addition to the prefect, offers personal advice and maintains a qualified fiscal and auditing supervision;<sup>42</sup> (2) the province maintains an "inspection service," which acts as agent of the prefect in controlling and supervising, in the interests of uniformity and conformity, the operations of the provincial and local administrations;<sup>43</sup> (3) but probably the most important of these is the provincial administrative *giunta* (or commission), which serves as a provincial administrative tribunal, reviewing many of the decisions of the *podestà* and provincial *preside* or president, and also serving as a court of first instance in administrative controversies. In the hierarchy of administrative justice, the *giunta* is inferior to the Council of State. The *giunta* is the normal collegial institution for giving formal approval to the acts of the *podestà* and president. No hard and fast line separates the general advisory functions of the *giunta* from those of the prefectural council; but by law, specific special capacities have been conferred upon each.

*Importance of the giunta.* In practice, the *giunta* has the greatest legal and administrative significance. Its membership includes the prefect, who summons it and presides over its deliberations, the chief provincial inspector (of the provincial inspection service), the two members of the prefectural council, and the chief accountant of the prefecture. To these *ex officio* members is added the vital element of a delegation of four party members, nominated by the Secretary of the Fascist Party from experts in matters legal, administrative, and tech-

<sup>41</sup> On the party as an organ of the state, see H. A. Steiner, "The Constitutional Position of the *Partito Nazionale Fascista*," *American Political Science Review*, XXXI (April, 1937), 227-242. The Party Secretary acquired his present status by R. D.-L., January 11, 1937, No. 4, G. U., January 23, 1937, No. 18.

<sup>42</sup> Art. 23.

<sup>43</sup> Art. 18.

nical, but formally appointed by the Minister of the Interior. Thus the *giunta* reflects party interests while at the same time acting as a liaison agency to coördinate the prefectural offices and the party hierarchy.<sup>44</sup> Formal appointment of these members by the Minister of the Interior minimizes the danger of a dyarchy.

*Provincial president and rectory.* A clear distinction must be made between the functions of the prefect, council, and *giunta*, which represent the central authority and supervise all local affairs on the one hand, and the functions of the provincial president and rectory, to whom are entrusted administration of the internal and autonomous affairs of the province as a local government area. The president is appointed for a four-year term by royal decree (equivalent to appointment by the Minister of the Interior), and is assisted by a vice-president and provincial secretary. The elected provincial council, which formerly corresponded to the French *conseil général* of the *département* was early abolished by the Fascists, to be replaced in 1928 by the provincial rectory, a group appointed, in each province, by the Minister of the Interior.<sup>45</sup> The rectory, which corresponds in a general way to the communal council in its sphere, varies with the population of the province: (1) where the province has a population greater than 600,000, there are eight members; (2) where the population is between 300,000 and 600,000, there are six; and (3) where the population is even smaller, there are four.<sup>46</sup> The rectory is subject to suspension by the prefect "for grave reasons of an administrative character or public order,"<sup>47</sup> and may be dissolved, for the same reasons, by the Minister of the Interior.<sup>48</sup> The president, vice-president (chosen from the membership of the rectory), and rectory constitute what is technically known as the "provincial administration."

The properties and resources of the province, as a corporation of public law, as well as of public institutions serving the province,

<sup>44</sup> The *giunta* was first established 50 years ago. The party element (one member) was introduced by the Law of December 27, 1928, No. 3123 [*B. P.*, II (December, 1928), 147], which reformed the *giunta*.

<sup>45</sup> The rectory, as a Fascist innovation, dates from the Law of December 27, 1928, No. 2962, *B. P.*, II (December, 1928), 138, on the reorganization of the provincial administration.

<sup>46</sup> Art. 115.

<sup>47</sup> Art. 124.

<sup>48</sup> Art. 125.

are subject to the provincial administration.<sup>49</sup> The president, who represents the "provincial administration" and signs its acts, is responsible for preparation of the budget and general supervision of the administrative activities.<sup>50</sup> Formal decisions concerning the organization of the provincial services and the expenditure of public funds are entrusted to the rectory,<sup>51</sup> which holds two regular meetings annually, and others at the call of the president.<sup>52</sup> In the interval between meetings of the rectory, the president is authorized to perform its functions in emergencies, subject to confirmation by the rectory.<sup>53</sup> The division of power between the president and rectory is somewhat different from that between the *podestà* and the council in the commune, assuming a more genuine interdependence between president and rectory and a real sphere of decisive action (as distinct from advisory) on the part of the rectory. The power to assume the initiative in the rectory is conferred upon the government authority (prefect), the president, and the members of the rectory, and their proposals are considered in that order.<sup>54</sup> This is in sharp contrast with the practice in the communes, where the council operates under an agenda fixed by the *podestà*.

*Central controls over president and rectory.* While the president and rectory have specific functions, this is not to imply that they have a real authority, or an independence of the prefect. Some of their decisions, like some of those of the *podestà*, require the approval of the provincial administrative *giunta*; others are submitted to the prefect for his "executory approval" before they take effect.<sup>55</sup> The veto of the prefect is substantially definitive. The action of the *giunta* is particularly effective in the fiscal sphere.<sup>56</sup> If the *giunta* adopts an unfavorable attitude toward the proposals of the president and rectory, those authorities are permitted to present their arguments; and, if the *giunta* rejects the proposal after consideration, an appeal may

<sup>49</sup> Art. 132.

<sup>50</sup> Art. 133 enumerates 17 specific powers of the president, including that of advising the prefect upon his request.

<sup>51</sup> Art. 135 enumerates 24 functions of the rectory.

<sup>52</sup> Art. 127.

<sup>53</sup> Art. 134.

<sup>54</sup> Art. 137.

<sup>55</sup> Art. 148.

<sup>56</sup> Art. 149 enumerates 10 such subjects.

be taken to the Minister of the Interior.<sup>57</sup> But in any event, whether the provincial regulations have been approved by the prefect or by the *giunta*, they may be set aside by the Minister of the Interior, with the advice of the Council of State.<sup>58</sup> A formal administrative jurisprudence has developed with respect to the forms and conditions of appeal.

Through this seemingly complex machinery, an effort is made to reconcile the requirements of national policy with those of a particular local situation. No lip-service is paid to the ideal of local self-government. Yet, though denying this and at the same time rejecting the representative, elective principle, the Fascist régime attempts to give full consideration to an appropriately expressed view of the provincial interests, without acknowledging the right of the province to claim special privileges or exemptions. Hence, from province to province there is uniformity in principle but a large amount of variation in details of administration. Consequently, one of the practical results of the system has been a substantial amount of actual provincial autonomy.

#### *Sec. 4. Inter-communal and Inter-provincial Unions*

*The power to create joint authorities.* From its bases in the communes and provinces, the Italian administrative system has acquired uniformity and symmetry. This symmetry is adjusted to special conditions by adequate provision for the creation of joint administrations. Unions (*consorzi*) may be formed, in addition to the regular institutions, (1) between communes, (2) between communes and a province, and (3) between provinces, for the mutual performance of specific services or improvements of common interest to the participants.<sup>59</sup> The significant result of this capacity of communes and provinces is that additional temporary and *ad hoc* administrative levels may be brought into existence, one to bridge the gap between the communes and provinces, the other to bridge the gap between the provinces and the central government. The unions created under the laws in force are "moral persons"—that is, corporations of public law, with appro-

<sup>57</sup> Art. 153.

<sup>58</sup> Art. 151.

<sup>59</sup> Arts. 156, 169.

priate institutions of government and an autonomy within the limits of the particular enabling act, or constitution.<sup>60</sup>

Unions may be formed under direct legislative mandate, but, in other cases, the communes and provinces may by agreement form unions to perform either obligatory or optional functions. Flexibility is the rule in determining functions. Typical unions are concerned with welfare and relief, with public works, with highways, with public industrial or economic establishments, or with other subjects upon which the joint action of several communes or provinces is likely to promote efficiency and serve the common interests. In any event, the organic law of a particular union, its *statuto* or constitution, contains a precise definition of its purposes and objectives. The *statuto* is given effect by decree of the prefect when the communes, members of the union, are in the same province, and by decree of the Minister of the Interior when provinces are members.<sup>61</sup>

*Governmental organization of joint authorities.* Subject to the general provisions of the law, the constitution sets up appropriate governing and administrative agencies. In each union, the "representative" body is the union-assembly, composed of delegates named by the union members in the proportion fixed by the *statuto*. Routine supervision of the union activities falls to a directing council (comparable to the rector) and to a president (comparable to the *podestà* or to provincial presidents). Whether the union maintains its own distinct administrative staff depends upon its purposes and financial resources; but, in most cases, the union draws upon the permanent staff of one or more of its members. The statute of the union prescribes the financial contribution expected from the members, generally in proportion to their respective populations and land-taxes; and, as a rule, the representation of the members in the controlling and governing organs bears some relation to their financial contributions to the support of the union.<sup>62</sup> Exceptions to these principles may be authorized.

No elaborate rules have been prepared for the purposes of governmental supervision and control, and, normally, a union is assimilated to the communes or provinces. When provinces are included in a union,

<sup>60</sup> Arts. 162, 171.

<sup>61</sup> Arts. 156, 157, 169.

<sup>62</sup> Arts. 160, 161.



the principles that govern its control are those fixed for the provinces, supervision thus being maintained by the prefect, provincial *giunta*, and prefectural council, as well as by the inspectorates, of the province wherein the union headquarters are situated.<sup>63</sup> When communes alone participate in the union, the principles of control that prevail are those that govern the member-commune with the largest population, or those which govern the provincial chief-place, if it is a member. Accordingly, the unions enjoy no greater independence of external regulation than do their members in their own internal administrations.

Administrative orders and regulations laid down by the union organs of government require, in most instances, approval by a prefect or by a provincial *giunta*; and the Minister of the Interior reserves the power to annul all measures taken or proposed. A formal term may be established for the life of the union, or it may be dissolved when its specific objectives have been accomplished. But, as with the communes, the union administration may be suspended or dissolved, and special commissioners may be charged with conducting its operations.

#### *Sec. 5. The Governatorato of Rome*

Under Fascist auspices, Rome, with a population of 1,178,491,<sup>64</sup> has become the largest city in Italy. Although the capital of the kingdom since 1871, Rome had been barren of economic importance until within the past decade. Since the State and Church each maintained headquarters in the city, its life depended upon the bureaucracy. Rome was as artificial as Washington, D. C. The rapid growth of the past decade has been explained in several ways: (1) by the recent expansion of industries in the vicinity of Rome; (2) by the migrations of the postwar period from the war-torn regions of the north; and (3) by the great increase in the numbers of the Fascist bureaucracy, a natural consequence of the broadening of the functions of the national government in a totalitarian state. A special form of government for the capital might have been warranted by the problems attendant upon so rapid an urban growth—housing questions, street construction and urban improvements, the need for improved transportation, and others.

<sup>63</sup> Arts. 165, 171.

<sup>64</sup> Preliminary estimate of April 21, 1936, census, excluding Romans in East African service.

More important than these, however, has been Mussolini's cardinal policy of reviving the glory and splendor of Rome, of making all Italy Rome-conscious, and of instilling into the capital, so long the refuge of ecclesiastical and civil bureaucrats, a new spirit of progress and activity.

Within a few months after the March on Rome, the capital was placed in charge of Senator Cremonesi as a Royal Commissioner.<sup>65</sup> Study was then given to the question of a permanent reorganization that would endow the city with a distinctive set of governing institutions and a peculiar relationship to the central authority. Accordingly, by the royal decree-law of October 28, 1925,<sup>66</sup> commemorating the third anniversary of the Fascist accession to power, there was instituted a so-called *Governatorato* of Rome, administered by a governor.<sup>67</sup>

*Governmental organization of the capital.* While the city of Rome remains for all legal purposes a part of the province of Rome, which it overshadows, it enjoys a partial immunity from the jurisdiction of the provincial prefect. Certain of the actions of the *Governatorato*, particularly financial, require the approval of the provincial *giunta*, but those actions of the governor which would require approval of the prefect if they were undertaken by *podestà* in other cities are exempt from his executory approval. Instead, the governor maintains a direct relationship with the Minister of the Interior.

In at least four notable ways, the *Governatorato* of Rome is distinguished from other communes. (1) The central government, assuming that its own efficiency and prestige are in a sense identified with the efficiency and prestige of the capital city, takes a more direct and active interest in its affairs. The governor and other important officials are appointed by royal decree, following the decision of the Council of Ministers, an extraordinary procedure in local government affairs. Since many of the policies of certain ministries, such as the Ministry of Corporations and the Ministry of Public Works, have been defined

<sup>65</sup> Relazione del R. Commissario, *L'amministrazione straordinaria del comune di Roma nel biennio 1923-1924* (Rome, 1924), followed by a similar report for 1925.

<sup>66</sup> R. D.-L., October 28, 1925, No. 1949, *B. P.*, I (June, 1927), 109.

<sup>67</sup> R. Vuoli, *Il Governatorato di Roma e le sue recenti modifiche* (Padua, 1930); *L'ordinamento amministrativo della Città di Roma* (Milan, 1927); V. Testa, "Sur le régime administratif des grandes communes," *Revue internationale des sciences administratives*, VII (July-September, 1934), 325-331.

with a special application for Rome, the governor maintains a direct contact with the ministries, as do the provincial prefects. (2) While Rome remains for legal purposes a part of the province of Rome, its relations to the province, as noted above, are peculiar, especially since the decrees of the governor may be given immediate effect (without approval) as a normal practice. (3) Special provision is made also for assumption by the *Governatorato* of specific national government functions, transferred to it by royal decree. In a sense, then, Rome's institutions of government are at the same time agencies of *national* government. A notable illustration of this is the unification of all municipal and national police forces under the *Questore* of Rome, and the regulations which apply to the police of Rome are established by the Minister of the Interior with the advice of the governor and *Questore*. (4) The institutions for the government and administration of Rome are *sui generis*.

*The governor of Rome.* The functions which pertain in other communes to the *podestà* are conferred upon a governor chosen by royal decree. This is an office of high dignity, with a special rank in the order of precedence at court. Men of national distinction have generally been appointed to the office. For example, the governor of Rome from 1933 through 1936 was Giuseppe Bottai, transferred to that office from his post as Minister of Corporations; and, late in 1936, Bottai was again given ministerial rank, and replaced by the present governor, Don Piero, Prince Colonna, a member of Rome's leading family. To assist the governor, there is a vice-governor and a secretary-general, corresponding to communal *vice-podestà* and secretaries.

*The council.* The Council of Rome is composed of twelve members, appointed for terms of four years by the joint decree of the Ministers of the Interior and Corporations. The method of appointment insures a limited recognition of the economic principle, which applies more fully in the constitution of the other communal councils, but there is no formal procedure for nomination by syndical associations. Paradoxically, the Council of Rome is much smaller than councils in other cities of comparable population, such as Milan. The governor, however, is empowered to draft into the public service those residents of Rome who have attained special cultural or scientific distinction. In Rome, the function of the council compares with that of other communal

councils, but its membership has a genuine cosmopolitan aspect, and its behavior exhibits peculiar characteristics.

Visible evidence of the activities of the *Governatorato* is found in the universal display of the characteristic "S. P. Q. R." on a large number of properties identified with the "municipalized" (socialized) transportation and other public utility services. In Rome, as in other cities where the municipalizing force has been felt, notably in Milan, the administration devolves upon special *aziende*, or enterprises, for each of the services, each enjoying a degree of autonomy under the direction of expert administrators, and with distinct budgets. In Rome, also, particular attention has been given to the problem of city-planning in the metropolitan area. A recent illustration of this activity is found in the work of the "Urban Committee," appointed on November 9, 1936, by Governor Colonna, which includes not only representatives of the city but planning experts designated by the Ministries of National Education and Public Works and other government departments.<sup>68</sup>

#### Sec. 6. Local Finance

From 1912 through 1926, communal and provincial budgets were generally characterized by large deficits; in 1921, the seventeen most populous cities had communal deficits. After the first four years of Fascism, only two of the seventeen had notably improved their condition.<sup>69</sup> Despite a general improvement following upon the adoption of the law on local finance of 1931,<sup>70</sup> the problem was far from solved in 1934. Of the twenty-two cities which had populations of more than 100,000 in 1934, only six could boast budget surpluses.<sup>71</sup> The sub-

<sup>68</sup> *Popolo d'Italia* (Milan), December 31, 1936, has an analytical statement of the program of the committee.

<sup>69</sup> See B. Griziotti, "Kommunalverwaltung und Kommunalfinanzen in Italien," *Jahrbuch für Kommunalwissenschaft*, 1934, I, 90-118, at 101, for an illustrative table. Of the complexities of the problem, finance ministers have not been unaware. In his well-known speech of June 2, 1927, in which he reviewed measures taken to improve the local finance picture, Count Volpi, then Minister of Finance, remarked: "Any Minister who believes that he can write the word 'finis' at the end of the chapter of local government finance would be, to say the least, very naïve." *International Conciliation*, No. 234 (November, 1927), 485-488.

<sup>70</sup> R. D. September 14, 1931, No. 1175; Ministero delle Finanze, *La finanza locale*. T. U., R. D. 14 settembre 1931, No. 1175 (Rome, 1931).

<sup>71</sup> *Annuario statistico italiano*, 1935, 221-222, these cities being Brescia, Ferrara, Livorno, Reggio di Calabria, Rome and Venice.

stantial majority of smaller communes faced comparable financial difficulties throughout the period.

*The financial legislation of 1931.* With few modifications, the pre-Fascist system for communal and provincial finance was maintained until September 14, 1931. As early as April 20, 1929, announcement was made in the Speech from the Throne that the Government proposed a general reorganization; and in 1930-1931, a special parliamentary commission, set up to study the question, submitted reports upon which the reform legislation was based.<sup>72</sup> While the general recurrence of financial difficulties on so wide a scale indicated that the problem was not to be solved by half-measures, the legislation of 1931 made few substantial changes. Five innovations, of which the first was by far the most important, were established: (1) Provision was made for a re-definition of the functions of local government, to the end that the State might assume, on its broader tax-base, local functions of national interest, and vice versa; this suggests the influence of the English Local Government Act of 1929; (2) the definition of the obligatory expenditures of the local governments was revised and clarified; (3) reforms were introduced to promote efficiency in the collection of local taxes and reduction of overhead; (4) stronger powers of supervision were given to the provincial *giunta* and to the Central Commission for Local Finance, and (5) new and improved forms were prescribed for the preparation of local budgets. Although the *Testo Unico* of the law on communal and provincial government of March 3, 1934, set aside some of the provisions of the law of 1931, the earlier law is still to be regarded as the substantial framework of local finance.<sup>73</sup>

*Central supervision and control.* Supervision over local finance is maintained, in the normal course of administration, by the prefect and the provincial administrative *giunta*. They must pass upon the communal budget (prepared by the *podestà*) and upon the provincial budget

<sup>72</sup> Commissione di studio per la riforma della finanza locale, *Relazione, schema di disegno di legge, allegati* (Rome, 1930); *ibid.*, *Relazione e schema di proposta* (Rome, 1931).

<sup>73</sup> See Griziotti, *op. cit.*; F. A. Repaci, *Le finanze dei comuni, delle provincie e degli enti corporativi* (Turin, 1936); L. Battaglini, *Le spese comunali. La loro esecuzione. Il controllo esterno su esse* (Empoli, 1928); A. Chianale, *Il patrimonio degli enti pubblici nei conti e nei bilanci* (Turin, 1935); and, on general principles of public accounting practice, V. De Rossi, *Contabilità generale dello Stato* (Turin, 1934).

(prepared by the president). Final appeal lies to the Minister of the Interior, acting jointly with the Minister of Finance. The prefectoral council reviews the audits and accounts. Routine fiscal matters are handled largely through the Local Finance Office of the Ministry of Finance, but in recent years a special institution known as the Central Commission for Local Finance has acquired prominence. The Central Commission is a body of fourteen official members which offers advice when requested either by the Minister of the Interior (who is its president) or by the Minister of Finance. All national departments which have any interest, either in local administration or in public finance, are given representation.<sup>74</sup> From time to time, the Central Commission assumes direct charge of the preparation of the budgets of communes or provinces where local finances are in a particularly poor condition. In the Chamber of Deputies on May 26, 1933, Finance Minister Jung reported that of a total of 7,306 communes, the financial affairs of some 500 were in charge of the Commission. The advice of the Central Commission is required before certain local expenditures in excess of the normal tax resources may be incurred;<sup>75</sup> it also advises the Minister of the Interior in the event that appeals are taken to him from the decisions of the prefect and *giunta*.<sup>76</sup>

*Limited local financial autonomy.* While each local area is under close national supervision, a limited amount of fiscal autonomy is extended to each. The basic laws, since 1915, have provided for a classification of communal and provincial expenditures as "obligatory" and "optional."<sup>77</sup> Optional expenditures are left entirely to the judgment of local authorities, in view of the requirements of a local situation, except that the control-agencies occasionally intervene to curb local am-

<sup>74</sup> Art. 329 of the law of 1934. The Central Commission for Local Finance includes representatives of communal and provincial administrations, the Ministries of the Interior and Finance, the Fascist Party, the Court of Accounts, the Council of State, the National Corporative Council, and includes, *ex officio*, the chief national administrative officials concerned.

<sup>75</sup> Art. 300, Law of 1934.

<sup>76</sup> Art. 306. Detailed statistics concerning local finance are not readily available. The *Annuario*, cited, reports for the larger communes; the Local Finance Office of the Ministry of Finance publishes periodical bulletins. The Direzione Generale di Statistica has published *Statistiche dei bilanci comunali e provinciali*, under varying titles, between 1861-1891, now outdated. Statistics on local consumption taxes have been published by the Local Finance Office: *Statistica dei dazi interni di consumo degli anni 1927-1928-1929*. . . . (Rome, 1931).

<sup>77</sup> Law of 1934, Arts. 90-92 (communes) and 143-145 (provinces).

bition and imagination. But even where the communes and provinces are required to incur "obligatory" expenditures, there is a large amount of variation from one area to another. There is not, from commune to commune, quite the degree of uniformity that would be expected in a régime where so constant a central supervision is maintained. Municipalization of the local services and industries has proceeded, not according to national prescription, but according to local needs and at different rates of speed. These differences may be illustrated by a comparison of budgets in cities of the same approximate size as of 1935:<sup>78</sup>

TABLE 2

## TOTAL AMOUNTS OF SELECTED COMMUNAL BUDGETS, 1935

<i>Commune</i>	<i>Population</i>	<i>1935 Income (lire)</i>	<i>1935 Expenditures (lire)</i>
Bologna .....	277,118	79,250,000	103,370,000
Venice .....	265,988	65,812,000	68,934,000
Trieste .....	252,238	72,821,000	95,812,000
Catania .....	243,812	34,591,000	46,970,000
Bari .....	196,737	28,341,000	31,981,000
Messina .....	195,590	22,977,000	26,483,000
Ferrara .....	119,556	19,624,000	18,359,000
Reggio di Calabria ..	117,748	11,195,000	10,485,000
La Spezia .....	111,541	22,871,000	25,302,000
Cagliari .....	110,922	18,413,000	18,224,000

*Central assumption of burdens.* A casual examination of recent communal budgets reveals substantial differences between the subjects for which local funds are spent in Italy and the United States.<sup>79</sup> Education, a major local expenditure in the United States, generally accounts for between five and ten per cent of the Italian local expenditure, owing to the assumption of responsibilities in this direction by the Government at Rome. Similarly, and for the same reason, the public works expenditures in Italy approximate only ten per cent of the local budget. Conversely, expenditures in relation to public, municipalized

<sup>78</sup> Data from *Annuario statistico italiano*, 1935, 223-224; populations given are based on preliminary census returns, April 21, 1936.

<sup>79</sup> See Table 3.



TABLE 3  
BUDGETS OF REPRESENTATIVE LARGE CITIES, 1935  
(*Annuario statistico italiano*, 1935, pp. 223-224)

	Amounts in Lire (000 omitted)				
	Bari ( <sup>a</sup> ) (196,737)	Florence (330,687)	Genoa (627,690)	Milan (1,114,104)	Rome (1,178,491)
<b>EFFECTIVE INCOME—</b>					
Proprietary income <sup>b</sup> .....	1,446	14,279	20,798	65,093	45,819
State coöperation .....	337	97	666	49	86,374 <sup>c</sup>
Net income from industrial enterprises .....	561	..	2,301	5,220	5,540
Gross income from communal enterprises and services .....	221	2,010	19,068	61,332	33,966
Coöperative and miscellaneous income .....	600	5,808	18,357	36,702	3,167
Consumption taxes .....	12,700	43,000	84,500	180,000	162,000
Taxes not related to public services .....	4,323	15,160	29,146	62,450	50,485
Participation in governmental taxes and rents .....	659	370	3,182	4,000	1,850
Taxes relating to public services and miscellaneous duties .....	1,034	3,158	9,052	17,600	19,025
Contributions .....	52	..	4,650	2,000	6,446
Surtaxes .....	3,415	9,136	15,239	37,166	46,690
Miscellaneous .....	2,993	1,395	250	5,400	..
Total (Effective) ....	28,341	94,413	207,169	477,012	461,362
<b>EFFECTIVE EXPENDITURES—</b>					
Debt-service and other proprietary burdens <sup>b</sup> .....	4,464	18,861	55,652	81,072	62,499
General expenses .....	7,377	35,268	68,502 <sup>d</sup>	117,007	125,245 <sup>e</sup>
Health and hygiene .....	13,595	22,120	31,816	122,818	78,899
Public security and justice..	330	1,105	2,847	8,251	4,506
Public works .....	1,524	61,031 <sup>f</sup>	58,494	95,440	120,016
Public instruction .....	2,442	8,616	16,352	42,028	34,225 <sup>g</sup>
Worship .....	7	15	153	145	1 <sup>h</sup>
Welfare .....	2,228	14,422	19,611	61,145	4,761
Agriculture .....	14	18	..	100	..
Total (Effective) ....	31,981	161,456	253,427	528,006	430,152

<sup>a</sup> Population on basis of Census, April 21, 1936.

<sup>b</sup> Combined figure.

<sup>c</sup> This represents state contribution for maintenance of state functions.

<sup>d</sup> Includes 3,000,000 lire a/c "reserve fund."

<sup>e</sup> Includes 6,830,808 lire a/c "reserve fund."

<sup>f</sup> An extraordinary item; compare total of 16,799,000 lire for 1934.

<sup>g</sup> Includes 6,175,000 lire for artistic and monumental property.

<sup>h</sup> These amounts represent only necessary communal contributions for religious purposes.

services in Italy are far greater than in the United States, but, in such cases, the enterprises are largely self-supporting and do not necessitate special taxes. Among the sources of local revenue in Italy, one notes the relative unimportance of the general property tax, described there as the "surtax." Generally, as in England, there is noted a tendency for the central government, collecting taxes on a broad base, to return subventions to local agencies: If the crisis in local finance continues, with steady deficits, a more definite trend in that direction is likely to develop. Currently, the most important source of tax revenue is the consumption tax, levied indirectly through retailers, and applied to practically all consumption goods.

### *Sec. 7. Conclusion*

In a number of specific ways, the present organization of the local government system in Italy reflects the major policies of the Fascist régime. (1) Denial of the democratic, elective principle has resulted in the abolition of all local elections and of local *representative* bodies. (2) The ambition to create a new Italy, intensely conscious of its national unity, has produced a more effective control from Rome over local affairs, and a strengthening of the power of the administrative bureaucracy. (3) The conviction that all Italian economy must be governed on the "corporative" principle has brought a degree of economic representation to the communal councils. (4) Recognition of the rôle of the Fascist Party as a directing élite finds it represented in provincial *giunte* and in the Central Commission for Local Finance. (5) While seeking uniformity as an ultimate objective, the régime recognizes the need for flexibility and adjustment to local situations. Hence, there is a flexibility in the areas of the communes, whose boundaries may be changed at any time; and, through the *consorzi*, or unions, special local institutions may be created as need dictates. (6) The Minister of the Interior shares his control of local administration with the Minister of Finance and other ministers, but retains the basic powers of control and review on so large a scale that the policies of the national government develop with relatively little inter-departmental confusion, and with substantial consistency.

## BIBLIOGRAPHY

- E. Arduino, *Manuale del podestà e del segretario comunale*, Brescia, 1926.
- E. Barborini, *Formulario delle deliberazioni del podestà*, Feltre, 1936.
- L. Battaglini, *Le spese comunali*, Empoli, 1928.
- L. K. Born, "What is the Podestà?" *American Political Science Review*, XXI (1927), 863-871.
- C. Camusso, *Agenda del podestà*, Empoli, 1937.
- F. Celentano, *I controlli sulle amministrazioni degli enti territoriali locali*, Turin, 1936.
- O. Checchi, *I regolamenti dei comuni*, Empoli, 1928.
- A. Chianale, *Il patrimonio degli enti pubblici nei conti e nei bilanci*, Turin, 1935.
- G. de Gennaro, *Manuale di legislazione comunale e provinciale*, Milan, 1929.
- V. de Rossi, *Contabilità generale dello stato*, 3d ed., Milan, 1938.
- U. Di Stefano, *Amministrazione del patrimonio e contabilità generale dello stato*, Livorno, 1938.
- G. Fassio, *Il podestà e le sue attribuzioni*, Milan, 1926.
- Federazione Nazionale delle Province d'Italia, *Le province d'Italia nel primo quinquennio del regime fascista*, Rome, 1929.
- J. Ficker, *Forschungen zur Reichs- und Rechtsgeschichte italiens*, Innsbruck, 1869.
- V. Franchini, *Saggio di ricerche su l'istituto del podestà nei comuni medievali*, Bologna, 1912.
- P. Gilardoni and D. Dall'Alpi, *Codice dell'amministrazione locale*, Rome, 1934.
- S. Giuliani, *Le 19 province create dal Duce*, Milan, 1928.
- B. Griziotti, "Kommunalverwaltung und Kommunalfinanzen in Italien," *Jahrbuch für Kommunalwissenschaft*, 1934, I, 90-118.
- A. Guerra, *Il podestà, esposizione storica dell'istituto dalle origini ai tempi nostri*, Naples, 1926.
- K. Hegel, *Geschichte der Städteverfassung von Italien*, 2 vols., Leipzig, 1847.
- Fr. Hertler, *Die Podestatsliteratur italiens im 12. und 13. Jahrhundert*, Berlin, 1910.
- Istituto Centrale di Statistica, *Annuario Statistico Italiano*, Rome, annual volumes.
- M. LaTorre, *Commento al nuovo Testo Unico comunale e provinciale e alle norme complementari*, Naples, 1934.
- L. Macciotta and C. Vittorelli, *Commento teorico-pratico al nuovo T. U. della legge comunale e provinciale*, 2d ed., Terni, 1934.

- E. Mazzocolo, *La nuova legge comunale e provinciale*, 8th ed., Milan, 1936.
- Ministero dell'Interno, *Variazioni di territorio e di nome avvenute nelle circoscrizioni comunali e provinciali*, vol. XI, Rome, 1934.
- S. Molinari, *Il podestà e la consulta municipale*, Milan, 1926.
- M. A. Paviolo, *Vocabolario legale amministrativo*, Cuneo, 1934.
- E. Presutti, *Istituzioni di diritto amministrativo italiano*, 3d ed., Messina, 1934.
- O. Ranelletti, *Istituzioni di diritto pubblico*, Padua, 1931.
- F. A. Repaci, *Le finanze dei comuni, delle provincie e degli enti corporativi*, Turin, 1936.
- C. Rossi, "Local Government in Italy, under Fascism," *American Political Science Review*, XXIX (1935), 658-663.
- A. Solmi, *Il comune nella storia del diritto*, Milan, 1922.
- G. Solmi, *La provincia nell'ordinamento amministrativo vigente*, Padua, 1935.
- V. Testa, "Sur le régime administratif des grandes communes," *Revue internationale des sciences administratives*, VII (July-Sep., 1934), 325-331.
- G. Volpe, *Questioni fondamentali sull'origine e svolgimento dei comuni italiani*, Pisa, 1904.
- R. Vuoli, *Il Governatorato di Roma e le sue recenti modifiche*, Padua, 1930.
- G. Zanobini, *L'amministrazione locale*, 3d ed., Padua, 1936.

## PART II. FUNDAMENTAL DOCUMENTS:

### COMMUNAL AND PROVINCIAL GOVERNMENT LAW, 1934

*Testo Unico*, Approved by Royal Decree, March 3, 1934, No. 383  
(*Gazzetta Ufficiale*, March 17, 1934, No. 65, Special Sup.)

(Translation by the Author.)

[Note: As in previous chapters, omissions of entire sections are indicated by \* \* \*, while . . . are used for less extensive omissions.]

### *Preliminary Provisions*

*Article 1.* Measures originating with the Government which confer new functions upon communal and provincial authorities, or which abolish or modify those already existing, must be established jointly with the Minister of the Interior when not sponsored by him.

*Article 2.* Any legislative regulation intended to impose new or increased expenditures upon the communes and provinces must be formulated jointly with the Minister of Finance and the Minister of the In-

terior. This concurrence should be made apparent in the pertinent project of law, and, whenever the expenditure relates to services of a State character, corresponding sources of revenue must be assigned to the communes and provinces at the same time.

*Article 3.* The power of substitution with respect to local public agencies, conferred by law upon the governing authority, may always be exercised through commissioners.

*Article 4.* Except where the law authorizes the delegation or substitution of powers, acts performed in the name of the communal, provincial, and union administrations by incompetent organs have no legal effect within the boundaries of the local area.

*Article 5.* Where the law does not otherwise provide, appeals from the actions of lower governing authorities are permitted, through hierarchical channels, to the higher authorities.

This appeal may be taken only by those whose interests are affected, and is not permitted more than thirty days after the administrative notification or communication, or, in any event, after the person concerned has had full knowledge of the action. . . .

Within twenty days after notice of the appeal, the interested parties may present their arguments to the appropriate authority.

If the competent authority takes no action within four months, the appellant may petition for a decision of the question on appeal.

If the competent authority gives no decision within two months after the filing of the petition, the appeal is regarded, for all legal purposes, as rejected.

All hierarchical appeals to the [central] Government authorized by law are definitively decided by action of the Minister, except where the appeal has been taken against ministerial measures, or where the law otherwise provides.

*Article 6.* With the advice of the Council of State, and either through administrative channels or upon application, the Government may at any time annul an act invalidated by lack of jurisdiction, excess of power, or by violation of general or special laws or regulations.

Appeals against royal decrees on questions of legality may always be taken to the jurisdictional session of the Council of State; in other cases, extraordinary appeals may be taken to the King.

*Article 7.* Except where special qualifications are prescribed, no person may be appointed to an office or position under this law unless he is a citizen of the State in possession of civil rights, of good moral and political conduct, of age, and able to read and write.

Appointments may be given to persons born after 1917 only if they have satisfied the educational obligation under Title V, Chapter I, of the *Testo Unico* approved by Royal Decree, February 5, 1928, No. 577.

Italians not born in the Kingdom are regarded as citizens of the State.

The proof of good conduct is supplied by a certificate from the *podestà* of the commune of residence; the proof of literacy is supplied by a certificate from the educational authority.

*Article 8.* Appointment to offices under the present law may not be given to:

1. The mentally infirm;
2. Bankrupt merchants; . . .

[The omitted groups (numbers 3 through 13) include criminals of various types, recipients of charity, beggars and others.]

Rehabilitated criminals are excepted.

*Article 9.* The conditions of incapacity or incompatibility for a particular office prevent appointment to it; and when they develop after the appointment, they justify removal from office.

Loss of the qualification of good moral and political conduct does not always lead to removal from office, but gives rise to the application of appropriate legal measures.

Where the law prevents the holding of several offices, the individual is permitted to declare, within two weeks from the date of the last appointment, which of the offices he intends to retain. If he fails to declare his choice within that period, the second appointment lapses.

*Article 10.* Where not otherwise provided, the power to remove or to accept the resignation of a particular officer pertains to the appointing authority.

*Article 11.* That an office is unpaid does not prevent the reimbursement of expenses which have been incurred in the exercise of its functions.

*Article 12.* No imperative order may be given to a public officer-designate by the person legally authorized to make the designation.

*Article 13.* Among public office-holders of the same grade, seniority is determined by the date of appointment; in case of simultaneous appointment, it is determined by age.

*Article 14.* Persons appointed to a public office for a definite period continue to hold office until their successors have been installed, even though the prescribed term has expired.

*Article 15.* The terms of members of collegial organs expire simultaneously.

A person appointed to replace a member of a collegial organ holds office only for the unexpired period of the term.

*Article 16.* Administrators of the communes, provinces, and unions may not share, directly or indirectly, in the functional services, tax collections, concessions, or contracts of the bodies with which they are

identified, or of the agencies subject to the administration, control, or supervision of those bodies.

The same limitation applies to councillors, as well as to the members of the Provincial Administrative *Giunta* for all of the agencies placed under its control.

## TITLE I

### ADMINISTRATIVE AREAS, GOVERNING AUTHORITIES, AND ORGANS OF CONTROL OVER LOCAL BODIES

*Article 17.* The Kingdom is divided into provinces and communes.

The boundaries of the provinces and of the communes are determined by law except where otherwise provided in Title II.

Unless a law changing provincial and communal boundaries provides otherwise, the relations between the bodies affected are defined by royal decree.

*Article 18.* Each province has a prefect, a vice-prefect, a Prefectoral Council and an Administrative *Giunta*.

In each province, an inspection service, entrusted to administrative functionaries of Groups A and B in the [Ministry of the] Interior, and directly responsible to the prefect, conducts periodic or unannounced inquiries into the provincial and communal administrations with the object of ensuring that the public services are properly and regularly performed and that the laws and regulations are strictly enforced.

*Article 19.* The prefect is the highest authority of the State in the province. He is the direct representative of the executive power.

The prefect is the source of all provincial activity, which receives its initiative, coördination and direction from him.

In conformity with the general instructions of the Government the prefect takes action to ensure a unified political direction in the performance of the various national and local functions within the province, co-ordinating the activities of all public offices and supervising the administrative services, except those identified with the ministries of justice, war, marine, aeronautics and railways.

He performs the functions assigned to him by the laws and, where necessary, adjusts the powers of the administrative and judicial authorities.

He promulgates, in case of necessity or emergency, regulations which he believes essential in the public interest.

He supervises the operation of all public administrations and of their personnel, subject to the general rules governing the legal status of State employees, and with the exceptions noted in the third paragraph of the present article.



He conducts the investigations which he may believe necessary with respect to the administrations under his supervision.

He sends suitable commissioners to the local government administrations either to compel the performance of acts required by law in the event of delay or omission on the part of the regular organs, or to administer them directly when the regular organs are, for any reason, unable to function.

He maintains public order and superintends the public security; he disposes of the public forces and may request the employment of other armed forces.

He presides over the Prefectoral Council and over the Provincial Administrative *Giunta*.

*Article 20.* Apart from the emergency ordinances arising from the exercise of the substitute function contemplated in Article 55, paragraph 1, the prefect may issue ordinances of temporary and emergency character relating to local sanitation and hygiene, when considerations of health or public security affecting the entire province or several of its communes require them.

The emergency ordinances of the prefect are directly enforced through administrative channels, reserving ultimate recourse to penal action.

When persons affected by these ordinances fail to comply with them, measures necessary for direct official enforcement may be taken three days after warning has been given, except in cases of emergency.

The use of public force is authorized.

With the executory approval of the prefect, an account of the expenses incurred in the enforcement of an ordinance is transmitted to the tax collector for collection from the persons concerned in accordance with the law on the collection of direct taxes.

Violations of prefectoral ordinances are punishable by arrest for not more than ten days or by a fine of not more than 500 lire.

*Article 21.* The vice-prefect replaces the prefect in event of absence, disability, or temporary vacancy.

*Article 22.* The prefect and his substitute cannot be called upon to render account for the exercise of their functions except by the higher governing authority, nor can they be subjected to legal proceedings for any official act without the authorization of the King, with the advice of the Council of State, except when accused of electoral crimes.

*Article 23.* The Prefectoral Council is composed of the prefect, or his substitute, who presides, and two councillors.

In auditing accounts, the chief accountant of the prefecture and the director of the accounting office, or the chief accountant of the fiscal administration, participate in the Council with deliberative votes, and the

employee of the accounting office who has compiled the accounting report participates with an advisory vote.

*Article 24.* The Prefectoral Council exercises the powers conferred by the laws and regulations. It is called upon to give its advice in the cases prescribed by the laws and regulations, or whenever requested by the prefect.

Where laws and regulations require the advice of the Prefectoral Council, the resulting measures must bear the formula: "Having heard the advice of the Prefectoral Council. . . ."

*Article 25.* The administrative session of the Provincial Administrative *Giunta* is composed of the prefect or his substitute, who presides; the provincial inspector; two prefectoral councillors designated at the beginning of each year by the prefect; the chief accountant of the prefecture; and four active and two alternate members nominated by the secretary of the Fascist National Party from persons expert in legal, administrative or technical matters.

The nomination of members by the secretary of the Fascist National Party is made for each position to be filled, and appointment is made by decree of the Minister of the Interior. These members hold office for four years and may be reappointed. They take the oath prescribed in Article 45.

The prefect appoints an alternate prefectoral councillor.

Alternates participate in the meetings of the *Giunta* only when active members of the respective categories are absent.

Five members constitute a quorum in the administrative sessions of the *Giunta*.

*Article 26.* Membership in the Provincial Administrative *Giunta* may not be held by:

- a. The president, vice-president, and the rectors of the province;
- b. The *podestà*, the *vice-podestà*, and members of the municipal councils of the provincial communes;
- c. Recipients of stipends and salaries from the provinces, communes, and public institutions for relief and welfare;
- d. Those who are not qualified to serve as [judicial] assessors according to the current ordinance of the Courts of Assize. . . .

*Article 27.* Members of the Provincial Administrative *Giunta* appointed upon the nomination of the secretary of the Fascist National Party receive an honorarium for each meeting as determined by decree of the Minister of the Interior.

*Article 28.* Members of the Provincial Administrative *Giunta* nominated by the secretary of the Fascist National Party who fail to participate, without justifiable reason, in three successive meetings, are removed from office.

Removal is proclaimed by the *Giunta* itself, on the proposal of its president, after hearing the persons concerned.

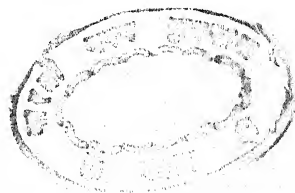
*Article 29.* The Prefectoral Council and the Provincial Administrative *Giunta*, before pronouncing definitive judgment on questions within their jurisdiction, have the power of requesting documents and explanations and of ordering, at the expense of the agencies concerned, any other investigation they believe necessary.

## TITLE II

### THE COMMUNES

#### *Chapter I*

#### *Territory*



*Article 30.* Communes with populations of less than 2,000, which lack the means of providing adequately for the public services, may, when topographic conditions permit, be joined to each other or be merged with another commune.

Two or more communes, however large their populations, may be joined when their respective *podestà* so request and reach an agreement fixing the conditions of the unification.

*Article 31.* Communes with territories patently inadequate for the establishment, expansion, or improvement of the public services, for the normal expansion of their inhabited sections, or for the requirements of their economic development, may have their areas enlarged.

For the latter purpose, maritime, port, river, and lake improvements which must be extended beyond the communal territory shall be regarded as economic requirements which warrant territorial adjustments.

In this case, as in all others where the request for territorial increase is based upon the necessity of establishing or extending the public establishments beyond existing boundaries, the necessary investigation cannot be begun until the proposed improvements have been fully approved by the competent authority.

Enlargement of territories may be effected by the complete absorption of adjoining communes, or by the addition of so much of their areas as may be sufficient for the purposes.

*Article 32.* Whenever the boundaries between two or more communes are not marked by easily recognized natural features, or for any other reason are uncertain, their definition and final correction may be brought about at the request of the several *podestà*, or through administrative channels.

The boundaries between two or more communes may also be cor-

rected when topographical reasons or approved local requirements make that desirable, and when the respective *podestà* so request and reach agreement on the conditions of the change.

*Article 33.* Boroughs or fractions of communes with at least 3,000 inhabitants, which have means sufficient to provide adequately for the public services, and which are physically separated from the chief-place of the commune to which they belong, may be organized as separate communes when a numerical majority of their taxpayers, who bear between them at least one-half of the tax burden of the borough or fraction, make such a request.

The chief-place of the commune may exercise the same privilege, if its fractions are naturally separated from it and are qualified to become separate communes, and if the majority of taxpayers in the chief-place, as defined in the preceding paragraph, so request.

In determining taxpayers and their share of the tax burden, for the purposes of this article, account will be taken only of regular taxes.

*Article 34.* A borough or fraction may be separated from the commune to which it belongs and added to an adjoining commune if its taxpayers, as defined in the first paragraph of the preceding article, so request, and if the commune to which the borough or fraction seeks to be added also concurs.

*Article 35.* Modifications in the areas of the communes and the boundary corrections contemplated in the preceding articles are given effect by royal decree, on the advice, in each case, of the *podestà* of the communes concerned, of the provincial rectory, and of the Council of State.

Decisions of the *podestà* relating to alterations in the area of the commune and to boundary adjustments are made public by posting on the official bulletin board over a period of fifteen days.

Any taxpayer is permitted to file a protest within twenty days after the last day of the posting.

Protests, with suitably documented records, are transmitted by the prefect, with his recommendations, to the Minister of the Interior.

*Article 36.* When alterations in the areas of the communes have been given effect, the prefect, with the advice of the Provincial Administrative *Giunta*, provides by decree for the distribution of their properties and for the division of their credits and liabilities.

On the recommendation of the Provincial Administrative *Giunta*, the prefect may authorize communes which have been united or added to an adjoining commune to maintain separately their respective proprietary revenues and obligations. Likewise, the division of expenditures for local highways, lighting, elementary education, religious buildings, and cemeteries may be authorized.

*Article 37.* Without affecting the unity of the communes, the pro-

visions of the second paragraph of the preceding article may be applied, upon request of the majority of the taxpayers as defined in Article 33, to fractions with more than 500 inhabitants when they are able to care for their own special interests and when local conditions permit.

At any time, however, the prefect may consolidate the proprietary revenues and expenditures of the fractions when the general exigencies of the commune require it, provided that the Provincial Administrative *Giunta* approves the action.

## Chapter II

### *Organs of the Commune—The Podestà*

*Article 38.* The commune is a moral person [corporation]. It is governed by a *podestà*.

Several adjoining communes within the same province may have a single *podestà*, so long as their combined populations do not exceed 10,000.

No more than three communes may be entrusted to the administration of a single *podestà*.

The Minister of the Interior may appoint a *vice-podestà* for communes with populations in excess of 20,000, and for those which are provincial chief-places, even though their population is not that large. Where the population of the commune exceeds 100,000, two *vice-podestà* may be appointed, one of whom may be a government functionary or employee otherwise excluded by Article 44, paragraph 2.

*Vice-podestà* may also be appointed for communes with populations of between 10,000 and 20,000 which are not provincial chief-places, but may be health, resort or tourist centers, headquarters of important public offices, or centers of notable industrial or commercial activity.

*Article 39.* Communes with populations in excess of 10,000, as well as provincial chief-places with smaller populations, have a council [*consulta*] of from ten to twenty-four members; in larger communes, where the population exceeds 100,000, the council has from twenty-four to forty members.

The prefect may also establish councils of from six to ten members in communes with fewer than 10,000 inhabitants, even though they may not be provincial chief-places.

*Article 40.* The offices of *podestà*, *vice-podestà*, and municipal councillors are gratuitous.

In exceptional cases, where the communal finances permit, the prefect, upon authorization from the Minister of the Interior, may assign to the *podestà* and *vice-podestà* an official allowance, to be carried on the budget of the commune.

*Article 41.* Each commune has a secretary and a communal office.

Where communes are divided into fractions, the communal office is located in the chief-place [of the commune].

In communes of great importance, the office may be divided into sections.

Several adjoining communes within the same province may jointly maintain a common secretary and office when their financial conditions, physical situation, and the scanty populations warrant.

*Article 42.* The *podestà* is appointed by royal decree, the *vice-podestà* by decree of the Minister of the Interior. They hold office for four years and may be reappointed.

*Article 43.* In addition to the qualifications of Article 7, the *podestà* and *vice-podestà* must hold at least a classical, scientific, technical, or magistral diploma, or another equivalent degree recognized by the Minister of National Education.

This degree is not necessary:

1. For those who served with troops in the zone of operations during the war of 1915-1918, with the rank of officer or sub-officer;
2. For those who have exercised for at least six months the functions of mayor [*sindaco*], of royal or prefectural commissioner, or of communal secretary.

*Article 44.* In addition to those disqualified under Article 8, appointment as *podestà* or *vice-podestà* may not be held by:

1. Ecclesiastics and religious ministers;
2. Government functionaries charged with supervising the communal administration, and employees of their offices, subject to the exception made in Article 38, paragraph 4;
3. Employees of local relief and welfare institutions;
4. Persons who receive stipends or wages from the commune or from institutions administered or subsidized by it;
5. Persons responsible for the management of communal funds; and those who have held such positions without rendering an audit, or who, having done so, still remain under financial obligation;
6. Persons currently engaged in litigation with the commune;
7. Persons who share, directly or indirectly, in the functional services, tax collections, concessions, or contracts of the commune, or in companies and enterprises organized for profit that are in any way subsidized by the commune;
8. Administrators of the commune and of public relief and welfare institutions placed under its supervision, for which they are held administratively or civilly responsible;
9. Persons who, having debts payable to the commune, are in arrears;
10. Forebears or descendants, or relatives by blood or marriage to

the second degree, of the communal secretary, as well as persons standing in the same relationship to the communal tax assessor, tax collector, or treasurer, to the holders of communal contracts, concessions or services, or to bailers of any kind;

11. Persons who have been imprisoned for more than one year for other crimes, unless their civil rights have been restored.

*Article 45.* *Podestà* and *vice-podestà*, before entering office, take the following oath before the prefect:

"I swear that I will be faithful to the King and to His Royal Successors; that I will loyally observe the *Statuto* and other laws of the State; that I will perform my functions with diligence and zeal, for the public welfare and in the interests of the administration, causing my private conduct, as well, to conform to the dignity of my office.

"I swear that I do not and will not belong to associations or parties whose activities are inconsistent with the duties of my office.

"I swear that I will perform all my duties solely for the inseparable welfare of King and *Patria*."

The *podestà* and *vice-podestà* who refuse to take this oath without qualification, or who fail to take the oath within one month after their appointment, unless they are prevented from doing so for some legitimate reason, are regarded as removed from office.

*Article 46.* The emblem of the *podestà* consists of a tri-colored band of silk, embellished with the seal of the State.

*Article 47.* The *podestà* may assign to the *vice-podestà* and to the councillors special responsibilities in the communal administration.

*Article 48.* The *vice-podestà* assists the *podestà*, and replaces him in the event of his absence or inability to perform his duties.

In communes where there is no *vice-podestà*, the *podestà* may entrust the responsibility of acting as his substitute to a communal councillor. Where there is no council, the *podestà* may entrust this function to a resident citizen of the commune, who would be qualified for appointment as a councillor.

The appointment of the substitute must be approved by the prefect.

Before entering office, the substitute takes the oath of Article 45.

*Article 49.* The *podestà* and *vice-podestà* may be suspended by decree of the prefect for failure to perform their official duties, or for reasons of public order.

For the same reasons, the *podestà* may be removed by royal decree; the *vice-podestà* may similarly be removed by decree of the Minister of the Interior.

No appeal, whether of an administrative or jurisdictional character, may be taken from the action of suspension or removal.



*Article 50.* The *podestà* administers the commune and is an officer of the Government.

*Article 51.* The provisions of Article 22 apply to the *podestà* and to his substitute.

*Article 52.* The *podestà*:

1. Represents the commune, signs its acts, and attends to its public transactions;

2. Supervises all of the communal offices and institutions;

3. Represents the commune in legal proceedings, either as plaintiff or as defendant;

4. Takes the action necessary to protect the rights of the commune;

5. Convoques and presides over the municipal council, determining the subjects to be considered at particular meetings;

6. Negotiates and concludes communal contracts;

7. Attends to the regular operation of the municipal services;

8. Performs the censorial functions required by law;

9. Sees that the laws are enforced;

10. Prepares the tax and proprietary-revenue registers of the commune;

11. Performs the functions assigned to him by law with respect to compulsory military service and is responsible for the conduct of the required operations;

12. Compiles and keeps up to date documents relating to the pre-emption and requisitioning of animals and vehicles;

13. Prescribes, in accordance with current legislation, the fares of public conveyances, boats and other vehicles permanently in the service of the communal public;

14. Prescribes the fees of public servants, porters, and the like, when these are not governed by special agreement;

15. Issues public certificates concerning individual and family status, pauper certificates, and other communal certificates.

When certificates are to be presented and have effect outside of the area of the province, the signature of the *podestà* must be authenticated by the prefect.

*Article 53.* The *podestà*, as the communal administrator, decides upon:

1. The organization of the offices and services;

2. The compensation and legal status of employees and wage-earners, of attendants in the sanitary service, of chaplains, of tax collectors and treasurers, where these exist, subject to the special laws in force;

3. Purchases, and the acceptance or rejection of legacies and gifts, subject to the legal authorization of the prefect;

4. Transactions, sales, and contracts in general;

5. The initiation and maintenance of communal litigation;

6. General regulations for public properties, health, housing and sanitation, as well as for the communal institutions;
7. Disposition of the public properties and resources of the commune;
8. The construction, removal and abolition of cemeteries;
9. Competitive bidding for public works contracts and related expenditures;
10. Communal taxes and the regulations necessary for their application;
11. The establishment and conduct of fairs and markets;
12. And, in general, all matters which are appropriate to the commune.

*Article 54.* The *podestà*, as an officer of the Government, is charged, under the direction of higher authorities:

1. To perform functions relating to vital statistics and to the keeping of the corresponding official registers;
2. To provide, in accordance with the laws and regulations, for public [political] security and health;
3. To take note of matters relating to public order, and to keep the higher authorities informed of them;
4. To arrange for the regular keeping of the population register;
5. And, in general, to perform the duties assigned him by the laws.

Whoever substitutes for the *podestà* in performing functions under this article is considered an officer of the Government.

*Article 55.* The *podestà* issues ordinances of a temporary or emergency character in relation to housing conditions and local sanitation and health when required for reasons of public order, and gives direct effect to them at the expense of the persons concerned, without prejudice to penal action when the fact to which the ordinance is directed is criminal. When the *podestà* fails to take action, the prefect may do so either by his own ordinance or through a commissioner.

With the executory approval of the prefect, after the individuals concerned have been heard, an account of the expenses incurred in the enforcement of the ordinance is transmitted to the tax collector for collection in accordance with the law on the collection of direct taxes.

From the ordinances of the *podestà* and prefect, appeal may be taken, on jurisdictional questions and on the merits, to the jurisdictional session of the Provincial Administrative *Giunta*.

*Article 56.* Where a commune is divided into boroughs or fractions which are remote from the communal chief-place, and with which there are difficulties of communication, the *podestà*, in his discretion and with the approval of the prefect, may delegate his functions as an officer of the Government to one of the councillors, or, when there are none, to

another person resident in the fraction or borough who would be qualified for appointment as a councillor.

*Article 57.* In communes with populations in excess of 60,000, even when they are not divided into boroughs or fractions, the *podestà* may, with the approval of the prefect, divide the commune into quarters and may delegate his functions as an officer of the Government to citizens who fulfil the conditions of the preceding article.

*Article 58.* In the boroughs or fractions that maintain separate properties and expenditures, as defined in Articles 36 and 37, the *podestà*, with the approval of the prefect, appoints a delegate to represent him. The delegate is chosen from the councillors, or, where there are none, from the residents of the borough or fraction who would be qualified for appointment as a councillor; he functions as an officer of the Government and gives effect to the decisions of the *podestà*, to whom he annually transmits a report on the conditions and needs of the borough or fraction. This report must be communicated to the prefect.

*Article 59.* Institutions generally serving the population of the commune, or of its fractions, are made directly subject to the *podestà*, when the regulations governing relief and welfare institutions are not applicable to them. Moreover, the *podestà* protects the interests of the members of the religious parish when, in accordance with law, they contribute to the expenses of the parish.

Relief and welfare institutions serving inhabitants of the commune are subject to supervision by the *podestà*, who may at any time examine their operations and review their accounts.

From decisions of the *podestà* relating to the subjects indicated in the two preceding paragraphs, appeals may be taken, on jurisdictional questions and on the merits, to the jurisdictional session of the Provincial Administrative *Giunta*.

Whenever the interests of the properties and resources of the fractions, or of the religious parish, conflict with those of the commune or its other fractions, the prefect appoints a commissioner who arranges for the administration of the object in controversy, with the powers of the *podestà*.

From the decisions of the prefect, appeals may be taken, on jurisdictional questions and on the merits, to the jurisdictional session of the Council of State.

The wishes of the *podestà* with respect to changes in the areas of the communal parishes must be consulted if the commune contributes to their support.

*Article 60.* The budgets and accounts of the institutions mentioned in the preceding article, as well as of the parish-churches, are subject to the examination of the *podestà* if they receive subsidies from the commune.

On questions which arise in consequence of this examination, appeals may be taken, on questions of jurisdiction and on the merits, to the jurisdictional session of the Provincial Administrative *Giunta*.

*Article 61.* The decisions of the *podestà* are taken with the assistance of the communal secretary.

*Article 62.* Every commune must keep an official bulletin board [*albo pretorio*] for the publication of decisions, ordinances, manifestoes, and other acts of which the public should have knowledge. . . .

[The omitted paragraphs of Article 62 prescribe the detailed procedure for the publication of communal documents.]

*Article 63.* If the *podestà* refuses to issue the certificates and documents which the law requires of him, or fails to correct errors contained in them, appeal is permitted to the Provincial Administrative *Giunta*.

The Provincial Administrative *Giunta*, if it feels the appeal justified, issues the certificate in conformity with the application and as a result of its inquiry.

From the decision of the Provincial Administrative *Giunta*, appeal is permitted to the Minister of the Interior.

### Chapter III

#### The Council

*Article 64.* Under the conditions of Article 39, the prefect fixes for each commune the number of members of its council, on the basis of an appraisal of all of the various productive enterprises operating in the commune.

*Article 65.* Productive enterprises which employ less than one per cent of the total number of workers in the commune, regularly declared as such for the collection of the required syndical taxes, may not be represented in the council.

The number of employers' representatives on the council must be equal to the total number of representatives of intellectual and manual workers.

The prefect determines which productive enterprises in the commune are qualified to be represented on the council, fixes the number of representatives to be assigned each of them and designates the [syndical] associations competent to make the nominations; he invites the associations to certify their respective nominees within a period of one month of his request.

*Article 66.* From the decisions of the prefect relating to the composition of the council, no appeal is permitted, whether of an administrative or jurisdictional character.

*Article 67.* The councillors are appointed by the prefect from the lists nominated by the legally recognized syndical associations. They hold office for four years and may be reappointed.

*Article 68.* Women may become members of the council if, in addition to satisfying the conditions defined in Article 7, they have completed their twenty-fifth year and satisfy one of the following additional conditions:

1. Have been decorated with the medal of military valor or the cross of war merit;

2. Have been decorated with the medal of civil valor . . . ;

3. Are mothers of persons killed in war or for the national cause;

4. Are widows of persons killed in war or for the national cause . . .

8. Are employees, or retired employees with or without pension, in the service of the State, of the Royal House, of Parliament, of the royal orders of chivalry, of the communes, provinces, the *Governatorato* of Rome, of public relief and welfare institutions or other public bodies or institutions. . . .

*Article 69.* Apart from the disqualifications of Article 8, appointment as councillor may not be held by ecclesiastic and religious ministers in charge of parishes, or those who ordinarily substitute for them, by members of the ecclesiastical brotherhoods and colleges, by those who are found in one of the conditions listed in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 11, of Article 44, or by blood relatives in the second degree and relatives by marriage in the first degree of communal tax collectors and treasurers.

*Article 70.* Forebears and descendants, husbands and wives, persons related in the first degree, and foster-parents and foster-children may not simultaneously be members of the council.

*Article 71.* The requirements of Article 45 apply to communal councillors.

*Article 72.* The council is convoked by written notice sent by the *podestà* to the residences of the councillors at least three days before the meeting. In case of emergency, twenty-four hours' notice is sufficient.

The written notice must include a list of the subjects to be considered, and must always be communicated to the prefect.

*Article 73.* The *podestà* and *vice-podestà* are not counted in determining the legal quorum for meetings of the council, nor do they have a decisive vote.

*Article 74.* When in two successive convocations separated by at least three days a quorum of the council cannot be obtained, the *podestà* is authorized to take action, dispensing with the advice of the council even in cases where it may be required by law.

The *podestà* is similarly authorized to take action, dispensing with the advice of the council, whenever an absolute majority of the votes is not cast.

In the cases mentioned in the two preceding paragraphs, the record of the decision must indicate the reasons why the council failed to take jurisdiction.

*Article 75.* The councillors who fail to participate, without acceptable reason, during three successive meetings are removed.

Removal is proclaimed by the prefect, on proposal of the *podestà* or on his own motion, after the member concerned has been notified of the reasons.

*Article 76.* The prefect, for grave reasons of an administrative character or public order, may suspend the council, immediately notifying the Minister of the Interior.

For the same reasons, the council may be dissolved by decree of the Minister of the Interior.

The reorganization of the council must take place within one year.

From actions taken under this article, no appeal is permitted, whether of an administrative or jurisdictional character.

*Article 77.* When the council has been suspended or dissolved the *podestà* is competent to take action, dispensing with the advice of the council even where it may be required by law.

*Article 78.* Whenever the administration of the commune is entrusted to a prefectural commissioner, the council is suspended *ipso jure*.

At the conclusion of the extraordinary administration the prefect may either restore the former council or reconstruct it.

*Article 79.* In communes with populations exceeding 100,000, the advice of the municipal council must be had on the following subjects:

1. The preliminary budget;
2. Expenditures which encumber the budget for more than five years;
3. Acceptance of legacies and gifts;
4. Constitution of [intercommunal] unions;
5. Application of taxes and regulations concerning them;
6. Purchase of industrial shares and real estate;
7. Communal litigation and transactions in which amounts in excess of 50,000 lire are involved;
8. Investments of funds exceeding 100,000 lire during the year, when not loaned on mortgages, or deposited in legally authorized credit institutions, or directed to the purchase of certificates issued or guaranteed by the State;
9. Sales of real estate, of certificates of public indebtedness, of simple credit certificates and industrial shares when the value of the

transaction exceeds 100,000 lire, as well as the establishment of servitudes or of long-term leases where the capital value exceeds the same amount;

10. Rental and transfer of real estate for more than twelve years;
11. Loans of any kind;
12. Direct assumption of public services;
13. Communal planning projects;
14. Changes in the classification of streets and projects for their opening and reconstruction;

15. General regulations for communal properties, health, housing, and local sanitation, and those relating to institutions pertaining to the commune;

16. Organization of the offices and services and regulations concerning the compensation and legal status of the personnel, subject to the provisions of special laws in force.

*Article 80.* In communes with populations of between 20,000 and 100,000, and in smaller communes which are provincial chief-places, the advice of the municipal council must be had on the following subjects, in addition to those indicated in paragraphs 1 to 6 and 10 to 16 of the preceding article:

1. Communal litigation and transactions in which amounts in excess of 10,000 lire are involved;
2. Investments of funds exceeding 50,000 lire during the year . . . ;
3. Sales of real estate . . . [etc.] when the value exceeds 50,000 lire.

*Article 81.* In communes of less than 20,000 inhabitants, which are not provincial chief-places, the advice of the municipal council, where one exists, must be had on the following subjects, in addition to those indicated in paragraphs 1 to 6 and 10 to 16 of Article 79:

1. Communal litigation and transactions in which amounts in excess of 5,000 lire are involved;
2. Investments of funds, in any amount . . . ;
3. Sales of real estate . . . whatever the value of the capital.

*Article 82.* Apart from the cases contemplated in the preceding articles, the advice of the council must always be had when the ordinances of the *podestà* are made subject to the approval of the Provincial Administrative *Giunta*.

In his discretion the *podestà* may at any time request the advice of the council, even when its advice need not be sought under the preceding articles.

*Article 83.* Whenever the *podestà* fails to conform to the advice given by the council, in those cases where its advice is required, this must be made to appear in the record of the deliberations.



*Chapter IV**Finance and Accounting*

*Article 84.* The communal properties are classified as fiscal and proprietary properties.

So far as lands subject to civic uses are concerned, no changes are made in the special laws governing the subject.

The separate administration of the lands assigned to a fraction is entrusted by the prefect to a commissioner chosen, as a rule, from the residents of the fraction. \* \* \*

*Article 87.* The contracts of the commune relating to sales, rentals, purchases, concessions and works-contracts must, as a rule, be preceded by public bidding in the forms established for the contracts of the State. . . .

[The omitted paragraphs of Article 87 permit private negotiations for contracts when the amounts involved are small, according to sums fixed separately for communes of more than 100,000 inhabitants, communes of between 20,000 and 100,000 inhabitants and smaller provincial chief-places, and for communes with less than 20,000 inhabitants.]

Private negotiations may also be authorized in exceptional circumstances, or when their necessity or convenience may be apparent.

*Article 88.* Proposed communal contracts are transmitted to the Prefectoral Council for its advice when they exceed 150,000 lire in the case of communes with a population greater than 100,000; 80,000 lire in the case of communes with populations between 20,000 and 100,000, and smaller provincial chief-places; and 40,000 lire in the case of other communes.

The Prefectoral Council gives its advice as much upon the propriety of the project as upon its administrative convenience. \* \* \*

*Article 90.* The communal expenditures are obligatory and optional.

*Article 91.* Expenditures concerning the following subjects and services are obligatory:

*A. Proprietary burdens:*

1. Imposts, taxes and surtaxes;
2. Protection of the communal property and the performance of obligations relating to it;
3. Payment of debts due. . . .

*B. General expenses:*

1. The communal office and archives;
2. Communal institutions;
3. National holidays and civic solemnities; . . .

[The enumeration continues through 34 items which relate to the routine and normal administrative affairs of the commune, including salaries and pensions, office rents, and social security fund contributions; included are a number of services and functions imposed, in the interests of the national administration, by national laws or decrees of higher authorities.]

C. *Sanitation and health:*

1. Local sanitary services and their personnel; . . .

[The enumeration continues through 20 items.]

D. *Public security and justice:* . . .

[4 numbered items.]

E. *Public works:* . . .

[6 numbered items, including roads and highways, water-works, and navigation works.]

F. *National education:*

1. Construction, maintenance and furnishing of buildings for elementary schools; the heating and lighting of the same buildings; . . .

[The enumeration continues through 14 numbered items, including lodgings for local school teachers, libraries, maintenance of the buildings and properties of the *Balilla*, communal contributions, to royal universities and royal institutes of higher learning, and contributions, from communes of more than 1,000 inhabitants, to the Italian Radio Corporation.]

G. *Agriculture:* . . .

[6 numbered items.]

H. *Relief and welfare:* . . .

[7 numbered items.]

I. *Worship:*

1. Maintenance of buildings devoted to public worship when other means of providing for them are insufficient.

- L. [*sic*] And, in general, all other expenditures imposed upon the communes by legislative measures.

*Article 92.* Expenditures not contemplated in the preceding article are optional.

*Article 93.* In accordance with the laws in force, the communes may:

1. Collect consumption taxes, taxes on the value of living accommodations, on families, on livestock, on public, private and domestic conveyances, on pianos and billiard tables, on industries, commerce and the arts and professions, on temporary residence, apart from the required license fees, and taxes on public coffee-making equipment and on goats and dogs;

2. Impose a tax for the use of public spaces and areas belonging to the commune, and on private areas used as public passageways, as well as on signs;

3. Administer directly, or subject to concession, with the privilege of collecting charges, public weights and measures, and the rental of public seats, so long as these are not compulsory; but such privileges do not extend to the maritime zone;

4. Impose taxes on the construction and occupation of tunnels below the street level, and taxes for the improvement and maintenance of sewers;

5. Collect charges for the removal of domestic refuse;

6. Establish a labor levy for public works;

7. Surtax the direct taxes on lands and buildings.

*Article 94.* In accordance with the laws in force, the communes share in the proceeds of national taxes on public performances, on the slaughter of cattle, on animal-powered vehicles and on bicycles, and on the use of highways.

*Article 95.* For the collection of duties and taxes, the communes are further classified by law.

*Article 96.* Each commune has a treasury-service.

Where the commune does not have a special treasurer, the collector of direct taxes undertakes the collection of revenues and the disbursement of expenses in accordance with the law on direct taxes.

## *Chapter V*

### *Governmental Supervision and Control*

*Article 97.* Decisions of the *podestà*, except those for the simple execution of measures already adopted and legally approved, must be transmitted to the prefect in duplicate, and acknowledged by him.

When he finds them in order, the prefect supplies the executory approval [*visto di esecutività*] for decisions which are not subject to the approval of the Provincial Administrative *Giunta*.

Otherwise, he may annul them on grounds of legality, or refuse approval on their merits.

Independently of the executory approval, decisions for which no special approval, authorization, or advice may be required, take effect twenty days after their receipt at the prefecture, unless they should, in any way, have been made interlocutory.

In his discretion, the prefect may request the transmission of decisions relating to the simple execution of measures already adopted. In such event, these decisions are subject to the rules of the second, third, and fourth paragraphs of this article.

*Article 98.* The decisions of the *podestà* in communes with populations in excess of 100,000, involving obligatory expenditures within the limits of the budget, are exempt from the executory approval of the prefect.

*Article 99.* In communes with populations in excess of 100,000, decisions concerning the following questions are subject to the approval of the Provincial Administrative *Giunta*: . . .

[The 14 numbered items omitted are practically identical with the items enumerated in Article 79.]

*Article 100.* In communes with populations between 20,000 and 100,000, and in smaller communes which are provincial chief-places, decisions concerning the following additional questions are subject to the approval of the Provincial Administrative *Giunta*: . . .

[The 3 numbered items omitted correspond with those enumerated in Article 80.]

*Article 101.* In communes of less than 20,000, and which are not provincial chief-places, decisions concerning the following additional questions are subject to the approval of the Provincial Administrative *Giunta*: . . .

[The 3 numbered items omitted correspond with those enumerated in Article 81.]

*Article 102.* The prefect transmits to the appropriate Minister a copy of the regulations approved by the Provincial Administrative *Giunta* relating to taxes, hygiene and health, public buildings, and housing.

The Minister, after consulting the Council of State, and, for regulations of local hygiene and health, after consulting the Superior Health Council, may annul the regulations in whole or in part insofar as they are contrary to the laws or regulations.

*Article 103.* Whenever the Provincial Administrative *Giunta* intends to refuse or suspend approval of the decisions subject to its examination, it makes the reasons known to the *podestà*, inviting him to present his conclusions within a fixed period of time.

On the basis of information given by the *podestà*, or, where none is made available before the period expires, the Provincial Administrative *Giunta* issues its decision.

*Article 104.* When the *podestà* does not promptly comply with orders, or fails to perform the duties made obligatory in any way by law, the Provincial Administrative *Giunta* takes action except where the prefect is designated as the proper substitute.

From the actions of the Provincial Administrative *Giunta*, appeals may be taken to the Minister of the Interior.

*Article 105.* When a fraction has occasion to conduct a legal action against the commune or against another fraction, the prefect appoints a commissioner to represent the fraction.

## Chapter VI

### *Infractions*

*Article 106.* Unless the law otherwise provides, violations of communal regulations are punishable by a fine of not more than 500 lire.

Violations of ordinances issued by the *podestà* in conformity with the laws and regulations are punishable with the same penalty.

The record of the proceeding must expressly indicate whether the violator has been personally notified. \* \* \*

[Omitted Articles 107-110 define procedures and appeals.]

## TITLE III

### THE PROVINCE

#### Chapter I

##### *The Provincial Administration*

*Article 111.* The province is a moral person [corporation] and has its own administration, with headquarters in its chief-place.

*Article 112.* Each province has a president and a rectory. The president is assisted by a vice-president chosen from the rectors, who substitutes in the event of his absence or inability to serve.

In addition, the province has a secretary and a provincial office.

*Article 113.* The president and vice-president are appointed by royal decree for terms of four years, and may be reappointed.

They may be removed by royal decree. From the action of removal, no appeal is permitted, whether of an administrative or jurisdictional character.

*Article 114.* The offices of president and vice-president are gratuitous.

In exceptional cases, where the provincial finances permit, the Minister of the Interior may assign to the president and vice-president an official allowance to be carried on the budget of the province.

*Article 115.* The rectors are appointed by decree of the Minister of the Interior. There are regular and alternate rectors.

There are eight regular rectors in provinces with more than 600,000 inhabitants, six in those with more than 300,000, and four in the others.

In each province, two alternate rectors are appointed to replace regular members when they are absent or unable to serve.

*Article 116.* The office of rector is gratuitous.

The rectory may pay the travel expenses of those of its members, not resident in the chief-place of the province, who participate in its meetings. . . .

*Article 117.* The requirements of Article 45 apply to the president, vice-president and rectors.

*Article 118.* Apart from the disqualifications of Article 8, appointment as president, vice-president, or rector may not be held by:

1. Ecclesiastics and religious ministers with parish jurisdiction;
2. Government functionaries charged with supervising the provincial administration, and employees of their offices; \* \* \*

[The omitted disqualifications, numbered through 10, correspond *mutatis mutandis* with those of Article 44, listing the disqualifications of municipal councillors.]

*Article 120.* No one may be president, vice-president, or rector in more than one province.

*Article 121.* The provisions of Article 22 apply to the president and vice-president.

*Article 122.* The president may assign to the vice-president or to the rectors special responsibilities in the provincial administration.

*Article 123.* Rectors who fail to participate, without acceptable reason, during three successive meetings are removed from office.

Removal is proclaimed by decree of the Minister of the Interior, after the member concerned has been notified.

*Article 124.* The prefect, for grave reasons of an administrative character or public order, may suspend the rectory, immediately notifying the Minister of the Interior.

*Article 125.* For grave reasons of an administrative character or public order, the rectory may be dissolved by royal decree on proposal of the Minister of the Interior, and the administration of the province may be entrusted to an extraordinary commissioner who exercises the powers conferred by the present law upon the president and the provincial rectory.

The reconstruction of the rectory must take place within one year.

From the measures taken under the present article, no appeal may be taken, whether of an administrative or jurisdictional character.

*Article 126.* The rectory may adopt its own rules of procedure.

*Article 127.* The rectory holds ordinary and extraordinary meetings.

The ordinary meetings are held in April and September; extraordinary meetings may be summoned at the discretion of the president or prefect.

Meetings are convoked by written notice sent by the president to the residences of the rectors at least five days before the meeting. In case of emergency, twenty-four hours' notice is sufficient.

The written notice must include a list of the subjects to be considered, and must always be communicated to the prefect.

*Article 128.* When a member of the rectory is at the same time a *podestà*, *vice-podestà*, communal councillor, or a member of the relief, welfare, or religious institutions functioning in the province, he may neither vote nor participate in meetings at which are considered matters of concern to the administration with which he is identified.

The same principle applies to all who hold or who have held responsibilities in relation to questions submitted for the consideration of the rectory.

*Article 129.* The prefect may take part in the meetings of the rectory, either personally or through a representative, but without a decisive vote.

*Article 130.* The decisions of the president are taken with the assistance of the provincial secretary.

*Article 131.* Each province must keep an official bulletin board for the publication of decisions and other acts of which the public should have knowledge. . . .

*Article 132.* The provincial administration concerns itself with:

1. The properties and resources of the province;
2. Public institutions organized in the service of the province;
3. Funds and subsidies placed at the disposal of the province by special laws;
4. The interests of the members of the religious diocese when, in accordance with law, they are called upon to contribute to the expenses of the diocese.

*Article 133.* The president:

1. Represents the provincial administration and signs its acts;
2. Represents it in legal proceedings, either as plaintiff or as defendant;
3. Convokes and presides over the rectory and arranges for the enforcement of decisions adopted by it;



4. Prepares the annual budget;
5. Supervises the provincial offices and personnel;
6. Appoints the employees of the provincial offices and institutions who do not have directing functions and who are not bureau-heads, and adopts other related measures contemplated by law;
7. Disciplines and reduces the stipend of employees who have directing functions or who are bureau-heads;
8. Appoints, suspends, and removes the wage-earners of the province;
9. Negotiates the contracts which the law requires, when approved in principle by the rectory, attending to the details of the bidding;
10. Prosecutes violators of the provincial regulations;
11. Takes action to protect the rights of the province and initiates possessory actions and all others which do not exceed 5,000 lire in value;
12. Decides upon the transfer of funds from one category of the budget to another, when the account to be increased arises from an obligatory expenditure; the transfer from one article to another of the same category; and the distribution of funds budgeted for unspecified expenses or calculated for variable and capital expenses;
13. Transfers amounts from the reserve fund to the several categories;
14. Conducts preparatory studies into questions to be discussed by the rectory;
15. Renders an annual account of his administration to the rectory;
16. Compiles, in the form prescribed by the regulations, a general annual report including all of the statistical information pertaining to the provincial administration, which is submitted to the rectory and the prefect;
17. Gives his advice to the prefect whenever requested to do so, and, in general, performs all other acts in the interest of the province that are not expressly reserved to the jurisdiction of the rectory.

*Article 134.* The president adopts ordinances which are otherwise under the jurisdiction of the rectory when emergency precludes the convoking of the rectory and when the need for action arises from a situation that has developed since its last meeting. These ordinances are reported to the first meeting of the rectory with the object of obtaining their ratification.

If ratification is refused, administrative actions under the ordinance, performed up till the moment when ratification is refused, remain valid. . . .

*Article 135.* In accordance with the laws and regulations, the rectory has jurisdiction over the following subjects:

1. The organization of the offices and services;

2. The establishment of provincial public institutions;
3. Contracts in general and the acceptance of gifts and legacies, subject to the legal authorization of the prefect;
4. Business relating to the administration of the provincial properties;
5. Secondary technical education, when not supplied by special institutions or when the government has authorized it under the special laws on the subject;
6. Public institutions serving the province or a part of it, when they have neither an autonomous nor a united administration;
7. The support of the dependent insane of the province, and related expenditures contemplated by the special laws on the subject;
8. The construction and maintenance of highways and waterway improvements, which are assigned to the province by special laws;
9. Subventions to the communes and unions for public works, public education, and for public utility institutions;
10. Provincial taxes and the regulations appropriate for their application;
11. Preparation of the budget; the transfer of funds from one category of the budget to another; expenditures for which it is not possible to draw upon the fund for unspecified expenses or the reserve fund; the examination of the final accounts of the treasurer and of the administrative accounts of the president; and the disposition of unclaimed funds;
12. The initiation and defense of litigation, subject to Article 133, paragraph 11;
13. Bidding for provincial public works contracts and related expenses;
14. The negotiation of loans;
15. Regulations for the institutions belonging to the province and the representation and protection of their interests;
16. Supervision of institutions serving the province or a part of it, even when they have their autonomous special administrations;
17. Appointment of the secretary and of the administrative and technical employees of the provincial offices and institutions who have directing functions or are bureau-heads, and the adoption of other related measures contemplated by law, subject to Article 133, paragraph 7;
18. The maintenance of provincial monuments;
19. The care of illegitimate or abandoned children;
20. The maintenance of buildings owned by the province and the preservation of the provincial administrative archives;
21. The care of the blind and deaf-mutes, where this is not supplied by unions or other autonomous institutions;

22. The appointment of the members of the commissions which special laws have transferred, in whole or in part, to the provincial administration;

23. The establishment of unions [see Title IV, *infra*];

24. The direct performance of public services.

*Article 136.* The rectory expresses its views on all questions where prescribed by law or where requested by the prefect.

*Article 137.* The initiative in submitting proposals to the rectory pertains, without distinction, to the governmental authority, to the president and to the rectors.

The proposals of the governmental authorities are first discussed, then those of the president, and finally, those of the rectors, in the order of their presentation.

*Article 138.* The rectory may delegate to one or more of its members the exercise of supervision over the regular operation of the institutions created or maintained at the expense of the province.

## Chapter II

### *Finance and Accounting*

*Article 139.* The province is authorized to take over, by agreement with the communes concerned, services of a communal character which affect several communes of the same province.

*Article 140.* Contracts of sale, rental, purchase, concession, and works-contracts must, as a rule, be preceded by public bidding in the forms established for the contracts of the State. . . .

[The omitted paragraphs of Article 140 define procedures and permit exceptions when the amounts are small, when special advantages may result, and in cases of emergency.]

*Article 141.* When their value exceeds 150,000 lire, proposed provincial contracts are communicated to the Prefectoral Council for its advice.

The Prefectoral Council gives its advice as much upon the propriety of the proposal as upon its administrative convenience. \* \* \*

*Article 143.* The provincial expenditures are obligatory and optional. [Cf. Articles 90 ff.]

*Article 144.* Expenditures concerning the following subjects and services are obligatory:

A. *Proprietary burdens:* . . .

[3 items comparable, *mutatis mutandis*, with Article 91A.]

B. *General expenditures:* . . .

[25 items corresponding to Article 91B.]

C. *Sanitation and hygiene*: . . .

[8 items corresponding to Article 91C.]

D. *Public works*: . . .

[7 items corresponding to Article 91E.]

E. *National education*: . . .

[8 items corresponding to Article 91F.]

F. *Agriculture*: . . .

[2 items corresponding to Article 91G.]

G. *Relief and welfare*: . . .

[4 items corresponding to Article 91H.]

H. And, in general, all other expenditures imposed upon the province by legislative measures.

*Article 145.* Expenditures not contemplated in the preceding article are optional.

*Article 146.* In accordance with the laws in force, the provinces may impose taxes in addition to the communal taxes on industries, commerce and the arts and professions; impose a tax for the use of public spaces and areas belonging to it; impose taxes on the construction and occupation of tunnels below the street level, and improvement taxes; and may surtax the direct taxes on lands and buildings.

The province may also impose a tax on animal-powered vehicles and bicycles, and on the use of highways.

*Article 147.* Each province has a treasury service.

The provincial collector of direct taxes must perform the duties of provincial treasurer when requested to do so by the president.

### *Chapter III*

#### *Governmental Supervision and Control*

*Article 148.* Decisions of the president, as well as those of the rectory which are not subject to approval by the Provincial Administrative *Giunta*, must be transmitted in duplicate for the executory approval of the prefect, who acknowledges their receipt.

Decisions concerning obligatory expenditures within the limits of the budget, and those relating to the simple execution of decisions already adopted and legally approved, are exempt from the executory approval.

The prefect may annul them on grounds of legality or refuse approval on their merits.

Twenty days after receipt of the record, unless the prefect has intervened, the decisions become effective.

*Article 149.* Decisions of the rectory concerning the following questions are subject to the approval of the Provincial Administrative *Giunta*:

1. Transfer of funds from one category of the budget to another;
2. Application of taxes and regulations concerning them;
3. Purchase of industrial shares;
4. Investments of funds, exceeding 100,000 lire during the year, when not directed to the purchase of land or to loan on mortgages, or to deposit with legally authorized credit institutions, or to the purchase of certificates issued or guaranteed by the State;
5. Sales of real estate, of certificates of public debt, of simple credit certificates or industrial shares, when the value of the contract exceeds 100,000 lire, as well as the establishment of servitudes or long-term leases, when the capital value exceeds that amount;
6. Rentals and transfer of real estate for more than 12 years;
7. Direct performance of public services;
8. Regulations adopted under legal authorization, and particularly the organic regulations for the public personnel and for the use of provincial properties;
9. Creation of public institutions maintained by the province;
10. Litigation and transactions when the value exceeds 50,000 lire.

*Article 150.* For the provinces which apply surtaxes within the normal limits, decisions which encumber future budgets on the principle of continuing expenditure require the approval of the Minister of the Interior on the advice of the Provincial Administrative *Giunta*.

For the provinces which apply surtaxes exceeding the normal limits, the required approval is given jointly by the Minister of the Interior and the Minister of Finance, on the advice of the Central Commission for Local Finance.

The procedures of approval defined in the two preceding paragraphs are also applicable when expenditures for the year in course are supplied by drafts on the reserve fund, by transfer of funds, or by new or increased sources of income according to Articles 317, 318, and 319.

*Article 151.* Provincial regulations for which no special ministerial approval is prescribed are transmitted in duplicate from the prefect to the appropriate Minister after approval by the Provincial Administrative *Giunta*.

The Minister, on the advice of the Council of State, may annul them in whole or in part insofar as they are contrary to the laws or regulations.

*Article 152.* When the Provincial Administrative *Giunta* intends to refuse or suspend approval of decisions subject to its examination, it makes the reasons known to the rectory, inviting it to present its conclusions within a fixed period of time.

On the basis of information given by the rectory, or where none is

made available before the period expires, the Provincial Administrative *Giunta* issues its decision.

*Article 153.* When the president does not promptly comply with orders, or when either he or the rectory fail to perform the duties made obligatory in any way by law, the Provincial Administrative *Giunta* takes action except where the prefect is designated as the proper substitute.

From the actions of the Provincial Administrative *Giunta*, appeal may be taken to the Minister of the Interior.

*Article 154.* Decisions of the rectories which involve changes in the operation or in the general technical and economic conditions of highways which are of concern to several provinces, or which alter public water courses, must be approved by the Minister of Public Works.

### Chapter IV

#### *Infractions*

*Article 155.* The provisions of Articles 106 to 110 are applicable to violators of the provincial regulations.

The powers of the *podestà* are exercised by the president.

### TITLE IV

#### UNIONS BETWEEN COMMUNES AND PROVINCES

*Article 156.* Communes may form unions with each other or with the province to supply specific services or to provide for improvements of common interest.

The establishment of the union is approved by decree of the prefect, on the advice of the Provincial Administrative *Giunta*, when the members belong to the same province; and by decree of the Minister of the Interior on the advice of the several Provincial Administrative *Giunte* concerned, when they belong to different provinces.

By the same decree, the statute of the union is approved and its headquarters determined.

*Article 157.* Independently of the cases where the formation of a union is required by law, several communes may form unions with each other or with the province to supply specific services or improvements of an obligatory character.

The compulsory establishment of a union is determined by decree of the prefect, when the participating members belong to the same province, and by decree of the Minister of the Interior, when they belong to different provinces; this is done on the advice of the several *podestà* and Provincial Administrative *Giunte* concerned, and, when the union includes the province, on the advice of the rectory.

By the same decree, the statute of the union is approved and its headquarters determined.

*Article 158.* The statute defines the purpose of the union, and, if one is fixed, its duration; the organs which represent it and their functions; the financial contributions of the united bodies; and, in conformity with the law, it establishes any other appropriate rule of administration.

*Article 159.* Each union has a union-assembly, a directing council, and a president. There is also a secretary appointed by the assembly.

With the concurrence of the administration affected, the function of secretary may be entrusted to the secretary or to another employee of the province, or of one of the communes in the union.

Where necessary, the union may maintain its own personnel; but with the consent of the respective administrations, it may avail itself of the services of persons employed by the members of the union.

Appointments are made by the directing council. . . .

*Article 160.* The allocation of the expenses of the union among the members is fixed by special agreement, after taking into consideration every element likely to aid in measuring their respective concrete interests.

If no other measure is available, the share of the communes will generally be determined on the combined bases of their populations and land taxes.

If the province is a member of the union, its contribution cannot be less than one-quarter of the total expense.

In the event that no agreement is reached, the financial share of each member is determined by the authority competent to establish the union.

*Article 161.* Representatives of the different members in the union are appointed, for the commune by the *podestà*, for the province by the rector, and in other cases by the appropriate organs.

The representatives must have the qualifications for appointment as communal councillors.

The number of representatives is fixed in the statute and they are allocated among members, as a general rule, in proportion to their financial contribution to the union. In inter-communal unions creating common secretarial offices or staffs, they are allocated in proportion to the population of each commune. . . .

*Article 162.* The unions formed under the preceding articles, whether optional or obligatory, are moral persons [corporations].

*Article 163.* The union-administration holds office for four years, unless its statute otherwise provides.

The requirements of Article 45 apply to the president and to the members of the directing council.

*Article 164.* The composition, statute, and functions of the union may be modified, through the procedure used to establish it.

*Article 165.* With respect to their functions, deliberations, finance



and accounting, and governmental supervision and control, the principles established for the provincial administrations are applied to the unions in which a province is a member; otherwise the principles that govern the commune with the largest population, or those governing the provincial chief-place, if a member, apply to the union.

Supervision and control over unions, as well as accounting jurisdiction, is exercised by the prefect, the Provincial Administrative *Giunta*, and the Prefectoral Council, respectively, of the province in which the headquarters of the union are situated.

*Article 166.* The union-administration may be dissolved for grave reasons of public order, or when, called upon to observe the duties imposed by law, it continues to disregard them.

Dissolution is decreed by the authority that approved or established the union.

In cases of urgent necessity, the prefect of the province in which the headquarters of the union are situated may, in anticipation of the decree of dissolution, suspend the union-administration and entrust its provincial administration of its affairs to his commissioner.

When the administration is dissolved, the management of the union is entrusted to an extraordinary commissioner.

The regular administration should be reorganized within one year. Wherever there has been occasion to dissolve the ordinary administration twice within three years, the time allowed for reorganization may be extended to two years.

*Article 167.* The unions, even when established by law, cease to exist *ipso jure* when their terms have expired or when their purposes have been accomplished.

Optional unions may be terminated by the decision of all members; termination is pronounced by decree of the prefect of the province in which the headquarters of the union are situated. Termination may also result from the request of members representing at least half of the financial contributions, when approval has been given by the prefect or by the Minister of the Interior, whichever is competent.

Moreover, unions formed through official channels may also be terminated in the same ways and under the same forms that were used for their establishment.

*Article 168.* Where a union is terminated, or some of its members withdraw, the properties of the union are redistributed among the several members in proportion to their financial contributions, unless the statute otherwise provides.

*Article 169.* Several provinces may form unions with themselves, or with one or more communes, to provide for specific services or improvements of common interest.

The establishment of the union is approved by decree of the Minister of the Interior, issued jointly with the appropriate Ministers, on the advice of the Provincial Administrative *Giunte* concerned.

By the same decree, the statute is approved and the headquarters of the union are determined.

*Article 170.* Independently of the cases where the formation of a union is required by law, several provinces may be organized into a union to supply specific services or improvements of an obligatory character by decree of the Minister of the Interior, issued jointly with appropriate Ministers, and on the advice of the respective rectories and Provincial Administrative *Giunte*.

*Article 171.* Inter-provincial unions, whether optional or obligatory, are moral persons [corporations].

The regulations established by the present Title for unions between communes and between communes and the province are applicable to unions between provinces and between provinces and communes.

Governmental supervision and control of inter-provincial unions is exercised by the prefect and Provincial Administrative *Giunta* of the province in which the headquarters of the union are situated. . . .

Accounting jurisdiction . . . is exercised by the Prefectoral Council of the province in which the headquarters of the union are situated. . . .

[The omitted paragraphs adopt the principles of Article 166 concerning the dissolution and suspension of the inter-provincial union-administration.]

*Article 172.* Other public agencies may participate in the foregoing unions when the laws to which they are subject so authorize.

## TITLE V

### THE COMMUNAL SECRETARY AND THE EMPLOYEES AND WAGE-EARNERS OF THE COMMUNES, PROVINCES, AND UNIONS

#### *Chapter I*

##### *The Communal Secretary*

*Article 173.* The communal secretary has the status of a functionary of the State. . . .

For the performance of his functions, the communal secretary depends, in the hierarchy, upon the *podestà* and executes his orders. \* \* \*

[Omitted Articles 174-219 are concerned with special qualifications, examinations, the oath of office, and personnel regulations.]

## Chapter II

### *Employees and Wage-Earners of the Communes, Provinces, and Unions*

*Article 220.* A special regulation for each commune, province, and union governs the legal status of employees and wage-earners, and, where the present law or the regulations for its enforcement do not make provision, the special regulation extends to the following subjects:

1. The official organization and, in the more important communes, a more detailed classification and subdivision . . . ;
2. Requirements for appointment, and the conditions and forms of competitive examinations;
3. Regulations concerning career, promotions, and periodical increases in stipends and wages;
4. The functions, duties and responsibilities of each employee or wage-earner, and their working hours;
5. The rules governing disciplinary measures, to be graduated according to the severity of the offense . . . ;
6. The rules governing suspension during the course of disciplinary proceedings . . . ;
7. The rules governing dismissal . . . ;
8. The rules governing retirement. \* \* \*

[Omitted Articles 221-234 define the conditions under which the essential provisions of Article 220 are to be applied.]

## Chapter III

### *General Regulations for the Communal Secretary and Employees and Wage-Earners of the Communes, Provinces, and Unions*

*Article 235.* For admission to employment in the communal provincial and union administrations, as well as in establishments municipally owned or directly operated, including the transportation facilities administered or maintained in coöperation with the administrations mentioned, enrollment in the Fascist National Party is required. \* \* \*

## TITLE VI

### THE RESPONSIBILITY OF ADMINISTRATORS, EMPLOYEES, AND THOSE WHO HAVE CHARGE OF PUBLIC MONIES

[Articles 251-265 omitted.]

## TITLE VII

GENERAL REGULATIONS FOR THE COMMUNAL, PROVINCIAL, AND  
UNION ADMINISTRATIONS*Chapter I**Administrative Areas and Representation*

*Article 266.* The names of the provinces, communes, fractions, and boroughs, and the municipal headquarters, are determined by royal decree, on the advice, in each case, of the bodies affected and of the provincial rectory.

*Article 267.* Controversies concerning boundary conflicts between communes or provinces are decided by royal decree, on the advice of the Council of State.

From this decision appeal may be taken, on legal questions and on the merits, to the jurisdictional session of the Council of State, or by means of the extraordinary appeal to the King. \* \* \*

*Article 269.* Women may not hold the offices of *podestà*, *vice-podestà*, delegate of the *podestà*, president, vice-president, rector, and union-administrator, nor may they become members of the Provincial Administrative *Giunta*.

*Article 270.* The administrative officers of the communes, provinces, and unions, and communal councillors, are suspended from office from the time charges are preferred against them for any of the crimes contemplated in Articles 8 (Nos. 7 and 8) and 44 (No. 11), or for any other crime punishable by penal confinement for more than one year. . . .

*Article 271.* The administrative officers of the communes, provinces, and unions, and communal councillors immediately vacate their offices when found guilty of any of the crimes contemplated in Articles 8 and 44, or any other crime punishable by penal confinement for more than three months.

*Article 272.* The offices of *podestà* and *vice-podestà* are incompatible with those of provincial president and vice-president. \* \* \*

*Chapter II**Meetings and Deliberations*

*Article 275.* The meetings of the councils, rectories and union-assemblies and directing councils are not public. The legal quorum for each of these collegial groups is one-half of their membership. \* \* \*

[Articles 275-288 are concerned with the details of procedure, voting and records.]

*Chapter III**Finance and Accounting*

[Omitted Articles 289-327 govern, in separately numbered "sections," (1) Property (Articles 289-291); (2) Services and Contracts (Articles 292-298); (3) Loans (Articles 299-300); (4) Budgets (Articles 301-311); (5) Expenditures and Revenues (Articles 312-322); and (6) Collection of Revenue and Disbursements (Articles 323-327).]

*Section 7**The Central Commissions for Local Finance and for Areas Damaged by Earthquakes*

*Article 328.* In the Ministry of the Interior there is created a Central Commission for Local Finance which, apart from the functions conferred by special laws, gives its advice on all questions relating to local finance which are submitted to its examination by the Minister of the Interior or by the Minister of Finance.

*Article 329.* The Central Commission for Local Finance is presided over by the Minister of the Interior or, on his designation, by the Under-secretary of State for the Interior, and is composed as follows:

- a.* A vice-president chosen by the Minister of the Interior;
- b.* A [provincial] president and a *podestà* designated by the Minister of the Interior;
- c.* A councillor of State and a councillor of the Court of Accounts, designated by the respective presidents [of the Council of State and Court of Accounts];
- d.* The directors-general of the civil administration and of the services for local finance, the comptroller-general of the State, and the chief director of the communal division in the Ministry of the Interior;
- e.* A representative of the Fascist National Party, designated by its secretary;
- f.* Two members of the National Corporative Council, designated by the Corporative Central Committee;
- g.* Two experts on questions of local finance, one chosen by the Minister of the Interior, the other by the Minister of Finance. . . .

The President may divide the Commission into subcommissions consisting of not less than five members, and may delegate to them, with powers equal to those of the Commission, a part of its functions. \* \* \*

[Omitted Article 330 makes special provision for a special commission in the Ministry of the Interior concerned with the relief

and solution of problems faced by provinces and communes injured by earthquakes.]

### *Chapter IV*

#### *Communes and Provinces That Are Unable to Balance Their Budgets*

[Omitted Articles 332-336 provide special controls and supervisions.]

### *Chapter V*

#### *Governmental Supervision and Control*

[Omitted Articles 337-343 include rules for extraordinary administrators (Article 338), and powers of inquiry of the prefect, *Giunta*, Prefectoral Council, *podestà*, president, rectory and administrative organs of the unions (Article 340).]

## TITLE VIII

### THE GOVERNATORATO OF ROME

#### *Chapter I*

##### *Territory, Governor, and Council*

*Article 344.* The *Governatorato* of Rome is a moral person [corporation] and has its own administration.

It performs all the functions and provides for all the services that fall within the jurisdiction of the communes under the laws in force.

For the purposes of a more organic coördination, there may also be a complete or partial transfer to the *Governatorato*, from other administrations of the State or of the Province of Rome, of functions that are administered in the territory of the *Governatorato* and which affect its territory and population. The transfer of functions is given effect by royal decree, on the joint proposal of the Minister of the Interior and the Minister of Finance, and other appropriate Ministers, with the advice of the Council of State.

*Article 345.* The territory of the *Governatorato* is part of the administrative area of the Province of Rome for all legal purposes.

Any alteration in the area of the *Governatorato* will be provided by royal decree, with the advice of the Council of State and of the Council of Ministers.

*Article 346.* The *Governatorato* is administered by a governor, assisted

by a vice-governor who substitutes for him in the event of his absence or inability to serve.

The Council of Rome is composed of twelve members.

*Article 347.* The *Governatorato* has a secretary-general and a separate administrative office.

*Article 348.* The governor, vice-governor, and secretary-general are appointed by royal decree on proposal of the Minister of the Interior, in consequence of the decision of the Council of Ministers.

The Minister of the Interior, with the advice of the governor, designates the functionary charged with substituting for the secretary-general in the event of his absence or hindrance.

*Article 349.* The governor and vice-governor are enrolled in the second and fourth grades, respectively, of Group A of the administration of the Ministry of the Interior.

The secretary-general is enrolled in the fourth grade of Group A of the administration of the Ministry of the Interior. . . .

The regulations governing the legal status of the civil employees of the State, except where the present law otherwise provides, apply to the governor, vice-governor, and secretary-general.

*Article 350.* The Minister of the Interior assigns to the governor and vice-governor an annual representation-allowance, borne on the budget of the *Governatorato*.

*Article 351.* Before taking office, the governor, vice-governor, and secretary-general take the oath prescribed in Article 45 in the presence of the Minister of the Interior. \* \* \*

*Article 353.* The governor exercises all of the powers that are conferred upon the *podestà* by the laws in force.

*Article 354.* The governor may entrust special responsibilities in the administration of the *Governatorato* to the vice-governor and to the councillors.

He may authorize other collaborative measures, availing himself of the services, not only of the vice-governor and councillors, but also of private citizens of singular capacity and renown in their own art, science or discipline.

*Article 355.* In the boroughs or fractions of the *Governatorato*, the governor may delegate his functions as a Government officer to one of the councillors or, as an alternative, to another person, resident in the fraction or borough, who has the qualifications for appointment as a councillor.

A similar delegation may be made for the individual regions [*riioni*] and quarters of the *Governatorato*.

*Article 356.* The provisions of Article 22 are applicable to the governor and to his substitute. \* \* \*



*Article 359.* The governor may adopt temporary and emergency decrees. . . . [substantially as in Article 55]. \* \* \*

[Omitted Articles 360, 361 and 362 apply, substantially, the provisions of Articles 59, 60 and 63, except that in the latter instance, appeal may be taken directly to the Minister of the Interior.]

*Article 363.* The members of the Council of Rome are appointed by decree of the Minister of the Interior, in conjunction with the Minister of Corporations. The regulations of Articles 68, 69 and 70 apply to the councillors.

The office of councillor is gratuitous.

Before entering upon their functions, the councillors take the oath defined in Article 45 in the presence of the governor.

They are appointed for four years and may be reappointed.

*Article 364.* The provisions of Articles 270 and 271 apply to councillors.

*Article 365.* The council is convoked by the governor, who determines the order of business. \* \* \*

[Articles 365-369 incorporate, substantially, the rules of council procedure defined in Articles 72-75.]

*Article 370.* For grave reasons of an administrative character or public order, the council may be dissolved by decree of the Minister of the Interior.

The council must be reconstituted within one year. . . .

*Article 371.* The advice of the council must be sought on the following subjects:

1. Preliminary budget;
2. Final (auditing) budget;
3. Application of taxes and regulations relating to them;
4. City-planning proposals;
5. The direct performances of public services.

The governor may also ask the advice of the council on other subjects, in his discretion.

*Article 372.* Where it is required that the advice of the council be sought, and the governor does not conform thereto, appropriate note should be made in the record of his decision.

The decision, in such case, is submitted to the Minister of the Interior for his approval. \* \* \*

*Article 374.* . . . The disciplinary powers conferred upon the prefect [with respect to public personnel] are exercised by the governor. . . .

*Article 375.* On confirmations, promotions, temporary suspensions, dismissals from the service, and the retirement from office of employees of the *Governatorato*, there should be obtained the advice of a commission

consisting of the vice-governor, who presides, the secretary-general, or his substitute, the head of the personnel office, or his substitute, and of two other bureau-heads, designated at the beginning of each year by the governor. \* \* \*

## Chapter II

### *Finance and Accounting*

*Article 377.* Except where the following articles otherwise provide, the provisions of Title II, Chapter IV and Title VII, Chapter III apply to the *Governatorato*. \* \* \*

## Chapter III

### *Direct Performance of Public Services*

*Article 388.* Except where the following articles otherwise provide, the regulations of the special law on the performance of public services by the communes and provinces are also applicable to the direct performance of public services by the *Governatorato*. \* \* \*

## Chapter IV

### *Supervision and Control*

*Article 394.* The ordinances of the governor on matters for which no special approval is required are definitive. \* \* \*

*Article 396.* The regulations that govern the competence of the jurisdictional session of the Provincial Administrative *Giunta* over the acts of the commune apply also to the acts of the *Governatorato*.

Similarly, the competence of the Provincial Administrative *Giunta* to hear appeals relating to the application of the taxes of the *Governatorato* is unaffected.

*Article 397.* The ordinances of the governor are not subject to the executory approval of Article 97 nor to the control-approval of Article 99.

The contracts of the *Governatorato* are not subject to the preliminary advice of the Prefectoral Council nor to the executory approval.

*Article 398.* When the governor fails to enforce orders or to perform duties made obligatory in any way by law, the Minister of the Interior takes action.

*Article 399.* The governor transmits to the appropriate ministers a copy of his regulations relating to taxes, hygiene and health, housing and sanitation.

The Minister, with the advice of the Council of State, and, for hygiene and health regulations, with the advice also of the Superior Health Council, may annul them, in whole or in part, insofar as they are contrary to the laws and regulations.

The regulations of the *Governatorato* relating to the *Agro Romano* [the program for the reclamation of adjoining agricultural lands] are submitted for approval of the Minister of Agriculture and Forests; educational regulations are submitted for the approval of the Minister of National Education.

No changes are made in the powers attributed to the Minister of Finance by Article 29 of the Royal Decree of November 18, 1923, No. 2440.

### Chapter V

#### Miscellaneous Provisions

*Article 400.* Within the boundaries of the *Governatorato*, the State and municipal police services are unified and placed under the *Questore* of Rome. Appropriate rules are established by decree of the Minister of the Interior, with the advice of the governor and *Questore* of Rome.

Rules concerning the division of expenses among the agencies affected are established by royal decree on proposal of the Minister of the Interior, in conjunction with the Minister of Finance, and on the advice of the governor.

*Article 401.* The prefect exercises the powers conferred upon him by law with respect to expropriation for public use, even within the limits of the *Governatorato* of Rome.

*Article 402.* Where the present Title does not otherwise provide, the rules contained in the Preliminary Provisions and in Titles II, IV, VI and VII of the present law are valid for the *Governatorato* of Rome.

### TITLE IX

#### TRANSITIONAL AND FINAL PROVISIONS

\* \* \*

*Article 415.* No changes are made in:

1. The special arrangements for the province and commune of Naples; \* \* \*

*Article 424.* Within six months after the present *Testo Unico* takes effect, the Minister of the Interior, in conjunction with the Minister of Finance, and on the advice of the Central Commission for Local Finance, will establish a new classification-table for communal and provincial revenues and expenditures and will establish new models for the preparation of budgets and accounts.

*Article 425.* Every regulation contrary to the present law, or incompatible with it, is abrogated.

*Article 426.* On the advice of the Council of State, the Government is authorized to issue regulations for the enforcement of the present law. \* \* \*

# THE SOVIET UNION

BY

BERTRAM W. MAXWELL

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## Chapter V

### THE SOVIET UNION

#### PART I. LOCAL GOVERNMENT IN THE SOVIET UNION

##### *Sec. 1. Local Government before the Revolution*

Under the tsarist régime, Russia was divided for purposes of administration into 78 provinces (*guberniya*), 21 regions (*oblast*), and one circuit (*okrug*). The government of each territorial division was headed by a governor whose administrative competence was limited, since the management of numerous institutions was reserved for the central government. Therefore the governor was in a measure simply the local administrative organ of the Ministry of the Interior. The governors were appointed and dismissed by the tsar on the recommendation of the Minister of the Interior. In some areas there were to be found governors-general who were appointed directly by the tsar to administer one or more provinces, and who had more extensive powers, including the command of troops within the territory entrusted to them.

The *guberniya* were divided into districts (*uyezd*). At the head of each district was a chief of police (*ispravnik*), appointed by the governor of the province. Under the jurisdiction of the chief of police were to be found, in the principal localities, deputies (*stanovoi pristav*) who were generally illiterate and ignorant of any legal provisions, yet endowed with extensive and practically undefined powers. Because of their unreasonableness, oppression, and cruelty, they were universally feared and hated by the rural population. Under these officials served a corps of mounted rural police (*uryadniki*), who were given authority to arrest all suspected persons on the spot, and who were the terror of the rural communities.

Within the district (*uyezd*) was the canton (*volost*), which in-

cluded a number of villages and had an assembly composed of members elected by the village communes. The delegates to the assembly elected an elder (*starshina*). The lowest administrative unit was the village commune, which had an assembly consisting of all the peasant householders of the community, who elected a head man (*starosta*). To the casual reader, this description may give the impression of considerable local self-government, but in reality the actual power was in the hands of the police officials and bureaus of the province or district.

In addition to the foregoing institutions of provincial and district government, there were to be found on the eve of the World War, in forty-three provinces (*guberniya*) of European Russia, zemstvo institutions.<sup>1</sup> These zemstvos were elected by provincial and district assemblies instituted by Alexander II in 1864. They consisted of a representative council (*zemskoye sobraniye*) and of an executive board<sup>2</sup> (*zemskaya uprava*), which was elected by the council. The zemstvos originally had extensive powers in the field of taxation, education, public health, roads, etc., but the central government continually hindered their work. The autocracy was jealous of every indication of self-government and to its very end fought maliciously against the popular will. Yet in spite of all obstacles, in the years between 1905 and 1917, the zemstvos entered into many different phases of the economic and cultural life of the country.<sup>3</sup>

*The city in the pre-revolutionary period.* City government in the Soviet Union cannot be judged by Western standards. The Russian city was not given legal status until comparatively recent times. In 1758 Catherine II granted a charter bestowing upon cities the rights of individuals before the law, and the privilege of taking part in the conduct of municipal affairs was extended to nearly the entire adult

<sup>1</sup> The term zemstvo comes from the Russian word *zemlya* (land), and is generally associated with organizations connected with the land, landed nobility, and peasants.

<sup>2</sup> The membership of the executive board was divided into five classes: (1) large landowners of the nobility who really represented no one but themselves; (2) delegates elected by the small landowners and clergy; (3) delegates of the wealthy burghers; (4) delegates of the middle urban class; (5) delegates of the peasants elected by the volost (canton).

<sup>3</sup> Kisevetter, *Mestnoye Samoupravleniye*. For a detailed description of the activities of the zemstvos during the World War, see Polner, Obolensky, and Turin, *Russian Local Government during the War and Union of Zemstvos*; Kolesnikov, *Administrativnoye deleniye gosudarstva*.



male civil population. Since this legislation was too far in advance of the general political and social conditions then prevailing in the Russian Empire, it was never carried out and soon became obsolete. In the years between 1862 and 1870, however, a number of ordinances were issued to reorganize municipal government with a view to granting the cities some degree of self-government.

Finally, in 1870 the so-called Municipal Act, modeled after the Prussian municipal ordinances, was promulgated. Under this act, all citizens paying local taxes were granted the right to vote and to serve on municipal boards. The electorate was divided into three classes in accordance with taxes paid by them. A municipal council was created, the membership of which was elected by indirect vote. Theoretically, the city government was supreme within the limits of its jurisdiction; practically, the control of municipal affairs was vested in a royally appointed governor, who was assisted by a special board on municipal affairs.

*Pre-war centralization.* In the years between 1870 and 1917 the central government tightened its grip on civic governments. In 1892 a municipal decree was issued which materially curtailed the jurisdiction of municipalities. The suffrage was thenceforth confined to owners of real property; as a result, only about one per cent of the city population was qualified to take part in municipal elections. The mayors and members of municipal boards became objects of governmental scrutiny and were classified as imperial officials, subject to the jurisdiction of civil service courts. In striking contrast, the powers of the appointed governor were increased; he received authority to suspend municipal ordinances that he deemed contrary to law or outside the jurisdiction of the city. Eventually the governor was placed in a position to exercise an absolute veto on municipal activity. In addition, the imperial Minister of the Interior could at any time suspend city ordinances that met with his disapproval. Such was the trend of all municipal legislation and the attitude on the part of the central government up to the time of the overthrow of the autocratic régime in 1917. The short-lived Provisional Government issued a decree on June 9, 1917, which introduced democratic municipal practices based on universal suffrage, but since eight months after its inception the Kerensky

régime was overthrown by the Bolsheviks, the new municipal system was destroyed after an existence of only five months.<sup>4</sup>

### *Sec. 2. The Soviet System*

Since the organs of local government are in themselves an integral and inseparable part of the pyramid which constitutes the soviet system, it is necessary to glance briefly at the entire structure. The word "soviet" means council, and the Russian government today is based on the "soviet," that is, on councils of delegates or deputies elected by workers employed in factories in industrial areas, by soldiers in the various units of the Red Army, by the peasants of villages or agricultural districts or communities, or by any combination of these groups.<sup>5</sup>

*Origin of the soviets.* Bolshevik writers trace the origin of the soviet system to the Revolution of 1905. In May of that year, a revolutionary soviet (council) of workers' delegates, finding the authorities of the Ivanovo-Vosnesensk demoralized and helpless, instigated a great strike and in addition took over the task of guarding public safety and performing some of the duties of local government. A general uprising resulted, and this novel idea spread to Petrograd and many other cities; but the tsarist government succeeded in crushing the rebellion. However, the soviets were not forgotten, and Lenin at once recognized their importance and saw in them the nucleus for the creation of the socialist system; for he believed that the foundation of a socialist society should be the proletarian class. When the Revolution of March, 1917, overthrew the imperial government, the Soviet of Petrograd was revived, and, having drawn into its membership the soldiers, became not only the ruling authority of the city but practically the de facto government of the entire land, until the Provisional Government gathered enough strength to assert itself.<sup>6</sup>

Today the Constitution of the U.S.S.R. not only provides for an assembly (soviet) for the government of the whole Union, which

<sup>4</sup> For a description of Russian municipal government and activities during the World War, see Astrov, *Municipal Government and the All-Russian Union of Towns*.

<sup>5</sup> Webb, Sidney and Beatrice, *Soviet Communism: A New Civilization?* Vol. I, pp. 11 and 61.

<sup>6</sup> Chugunov, *Gorodskiye Sovety*, pp. 7-9.

covers one-sixth of the entire land surface of the globe, but also for a graded hierarchy of local governing bodies (soviets), at once legislative and executive, elected by the workers throughout the Soviet Union.<sup>7</sup>

While the soviet power is based on the urban industrial class from whence the nucleus of the system sprang, actually the foundation of the system consists of delegates elected by nearly the whole adult population, both rural and urban. At the base of the pyramid of soviets are some 75,000 primary soviets of the village or city. Above the village and city soviets within each of the eleven constituent republics which make up the U.S.S.R.<sup>8</sup> are ranged those of the *raion*, *okrug* (circuit),<sup>9</sup> *oblast* (region) or *krai*.<sup>10</sup> The Supreme Soviet is the highest organ of power within a constituent republic; and the whole structure of government and administration culminates in the apex of the wide-based pyramid with the Supreme Soviet of the U.S.S.R.<sup>11</sup>

### *Sec. 3. The Government of Cities*

On March 1, 1930, there were in the Soviet Union 709 municipalities and 485 workers' and urban settlements. The population of the Soviet Union cities, in accordance with the census of 1926, was 24,900,000. The estimated urban population in 1933 was 38,700,000, or 23.3 per cent of the total population. In Russia proper, there were 485

<sup>7</sup> Webb, *op. cit.* p. 61.

<sup>8</sup> These are R.S.F.S.R. (Russia proper), the Ukrainian Soviet Socialist Republic, the White Russian Soviet Socialist Republic, the Azerbaijan Soviet Socialist Republic, the Georgian Soviet Socialist Republic, the Armenian Soviet Socialist Republic, the Turkmen Soviet Socialist Republic, the Uzbek Soviet Socialist Republic, the Tajik Soviet Socialist Republic, the Kazak Soviet Socialist Republic, the Kirghiz Soviet Socialist Republic.

<sup>9</sup> While the New Constitution still mentions the *okrug*, most of them were abolished several years ago.

<sup>10</sup> See Maxwell, B. W., *The Soviet State*, p. 101; and Webb, *op. cit.*, p. 62, note 1, p. 63, note 1, also appendix 1.

<sup>11</sup> Within each constituent republic there is a council of commissars which is equivalent to the Western cabinet, and in the Union itself a Council of Commissars which is divided into two groups: (1) The All Union Commissars, which have no counterpart in the constituent republics; and (2) the Unified Commissariats, which are duplicated in every constituent republic. Ordinarily the All Union Commissariats are little concerned with local government. The Unified Commissariats work through their representatives within the several constituent republics, while the commissariats of the republics are in direct touch with the work of local government which concerns their respective departments. See Maxwell, B. W., *The Soviet State*, Chapter VIII; and *The New Constitution of the U.S.S.R.*, Chapters V and VI.

cities and 316 workers' settlements of an urban type. Some cities in the Soviet Union, and especially in Russia proper, because of an influx of peasants from the country, showed a considerable increase in population. On January 1, 1933, there were 65 cities in the U.S.S.R. with a population of over 100,000 as against 31 in 1926 and 16 in 1914. The following figures may serve as an illustration:<sup>12</sup>

	1926	1931	1933
Moscow .....	2,124,500	2,781,300	3,572,000
Leningrad .....	1,614,008	2,228,300	2,839,000
Baku .....	452,808	575,200	709,000
Kiev .....	513,789	539,500	607,764
Kharkov .....	417,342	521,500	742,000
Rostov-on-Don .....	308,284	457,100	520,000
Tashkent .....	323,613	421,800	491,000
Gorky (Nizhni-Novgorod) ..	220,815	350,300	477,000
Dnepropetrovsk .....	233,001	322,800	378,000
Stalingrad .....	148,370	294,500	412,000
Saratov .....	215,276	277,500	338,000
Sverdlovsk .....	131,535	223,300	481,000
Samara .....	175,662	220,400	239,000

*Transition to the soviet system.* It is impossible in this brief study to go into a detailed discussion of the various changes that took place in city government during and immediately following the Revolution of 1917. However, the Bolshevik war cry, "All power to the soviets," soon inspired the soviets to take over all possible authority. It was, however, only after the feeble and much harassed Provisional Government collapsed on October 25, 1917 (old style), that the soviets found themselves in possession of all power in every branch of government. Times were, however, too stirring, and revolutionary enthusiasm was running too high, for the soviets to pay much attention to the rather prosaic task of city administration, and for the time being they left the details of administration to the old city councils.<sup>13</sup>

The new government was inclined to leave municipal machinery intact, reserving to the soviets, however, the controlling power. But

<sup>12</sup> *Soviet Union Review* (November 1932) p. 200; also *Handbook of the Soviet Union*, pp. 3-4.

<sup>13</sup> Although in some cities, such as Kronstadt and Krasnoyarsk, the Soviets of Workers' and Soldiers' Deputies became the actual ruling power.

frequently, to end friction and misunderstanding, the soviets simply dispersed the local authorities and took over the administration themselves. Unfortunately, the soviets at that time had had very little administrative experience; their traditions were not those of a governing class, but rather those of a national revolutionary organization, and as a result misrule and inefficiency were rife, often reacting disastrously upon city welfare. There was pronounced resentment on the part of the urban population toward the new authority, and often it expressed itself in passive opposition. As the fever of the revolution subsided, the soviets settled down to constructive work, the opposition died down, and eventually the soviets were accepted as the actual municipal authority. Yet down to the latter part of 1917, there was considerable agitation among non-Bolsheviks in favor of organizing democratic municipal organs.

Before the promulgation of the new Soviet constitution in July, 1918, no uniform system of municipal government was to be found in Soviet Russia; the organization and function of municipal organs differed in the various cities of the land. To be sure, the People's Commissar of the Interior issued decrees from time to time for the purpose of bringing about some standardization in municipal affairs, but not until the adoption of the constitution were those orders taken seriously. Every local soviet considered itself the highest authority in a given territory, levying taxes and contributions, and independently organizing its system of administration. Some of these groups went so far as to order execution of opponents, without consulting the central authorities.<sup>14</sup>

Soon after the promulgation of the constitution, however, civil war broke out, bringing with it confusion, and still further limiting and hindering the inexperienced local agencies in their attempt to build up orderly administrative machinery. Military authority was supreme, and very little attention was paid to constitutional and legal provisions. It was a period of terrific struggle, famine, and wretchedness. All the people, and especially the people of the cities, were hungry and cold, and thought very little of self-government.

Not until 1925 did the work of developing city organs begin seriously. Soviet Russia was facing a tremendous and tedious task of

<sup>14</sup> Chugunov, *Gorodskiy Sovety*, pp. 16-17.

resurrecting civic life and at the same time building municipal institutions based on revolutionary ideas. Before this could be accomplished, however, it was necessary to clear away the debris of revolution and civil war; damaged streets and buildings had to be repaired, and new buildings and public playgrounds erected. At the same time an attempt had to be made to interest the masses in actual city administration. Indeed, the places in municipal governmental agencies previously occupied by the well-born were to be filled by men and women of the working class, and a city life had to be created under conditions hitherto unknown in the history of the world.

The present structure of city government in Soviet Russia was created by the Municipal Decree of 1925,<sup>15</sup> which designates the city soviet as the governing body. Like the other soviets, such as those of the *raion*, or province, the city soviet is based on Lenin's teachings in regard to control of governmental agencies, namely, "centralized supervision and decentralized activity."

*The city soviets.* The city soviet is a large, unwieldy body, its size depending upon the population of the city. In comparison with city councils of Western Europe and the United States, the city soviets are of enormous proportions. Some of the larger cities, indeed, have soviets of over one thousand members; good examples being the soviets of Moscow<sup>16</sup> and Kharkov, which in 1936 were composed of 2,116 and 1,900 members respectively. Until recently, the soviets of Moscow and Leningrad elected one delegate for each 1,500 voters. The New Constitution of the R.S.F.S.R., adopted in January, 1937, however, provides that Moscow and Leningrad shall elect one member for every 3,000 population; and this provision will considerably reduce the size of the soviets in those cities.

In addition to the acting members of the soviet, alternates not to exceed one-third of the number of delegates are to be elected. These alternates may be asked to participate in discussions, but are not entitled to vote. Frequently they are appointed to replace members who are absent on account of sickness or other causes. Every conceivable

<sup>15</sup> While this study concerns itself primarily with the cities of Russia proper, practically the same may be said of city government throughout the Soviet Union.

<sup>16</sup> For a recent study on the city of Moscow, see Simon, E. D., Sir, *et al.*, *Moscow in the Making*.

economic and social group, provided it does not belong to the disfranchised element,<sup>17</sup> is given representation in the city soviet. All men and women who are citizens of the Soviet Union<sup>18</sup> and are 18 years of age at the time of the election are entitled to vote.

In smaller urban centers the ratio of representation is so arranged as to draw a large part of the population into the local soviets. Thus municipalities elect one deputy to represent not less than 100 or not more than 1000 persons, the number depending upon the size of the town.<sup>19</sup>

*Ward soviets.* In cities of over 100,000, the law permits the organization of ward soviets to assist in carrying out the duties of administration in various parts of the city. Moscow, for instance, has twenty-four such soviets. As a rule delegates to the ward soviets are elected at the same time as the city soviets; and persons may be elected to both bodies, although this is rather unusual. The city soviets delegate to the ward soviets the detailed administration of their territory and the management and supervision of ward institutions and sanitation. Some ward soviets in Moscow have over 200 members. These local soviets are permitted to have a presidium of several members, and committees fashioned after those of the city soviet. The finances of the ward soviets are a part of the budget of the city soviet. In general, they must obey the directions of the city soviet.<sup>20</sup>

*Conduct of elections.* Elections are conducted by an electoral commission of from eleven to twenty-five members appointed by the city soviets for each election, the number depending upon the size and importance of the city.<sup>21</sup>

<sup>17</sup> The New Constitution has practically abolished this group.

<sup>18</sup> This also applies to permanently resident foreigners of the proletarian group.

<sup>19</sup> The New Constitution of the R.S.F.S.R., Article 145. Within this ratio the central authorities by special decree decide upon the representation of various classes of municipalities. Before the adoption of the New Constitution, municipalities of 1,000 inhabitants elected one deputy for every 15 voters; towns of 1,000 to 3,000 one deputy for every 20 voters. In the larger cities of 50,000 to 100,000, one deputy represented 150 voters; in cities over 100,000 one deputy represented 200 voters; while in cities with between 400,000 and 450,000 inhabitants one delegate was elected for every 400 to 500 electors.

<sup>20</sup> See Webb, *op. cit.*, pp. 54-6; for a description of Moscow ward soviets see Simon, *op. cit.*, pp. 29-36.

<sup>21</sup> The commission may appoint a sub-commission to compile lists of the non-organized elements of the community in the various parts of the city.



The members of the commission represent the city soviet, the professional unions, the Red Army, the Komsomol (Communist Union of Youth), workers directly connected with production, and the local congress of delegates of women workers. A chairman is appointed by the executive committee of the next higher soviet. The voting takes place biennially, and notice must be given to the voters at least five days before the election.

While the governing body, the city soviet, is large, the electoral constituencies are relatively small. Each industrial establishment is entitled to elect a stipulated percentage of delegates to the city soviet, and thus the Russian city is given representation on an occupational rather than a territorial basis as in the case of European and American cities. All employees over 18 years of age may vote, and all are eligible for election as delegates to the city soviet; so a lively campaign precedes the election. For persons who are not employed in industry or some large employing establishment, such as housewives, superannuated individuals, or persons employed in "independent" occupations such as writers, peddlers, domestic servants, etc., voting places are arranged in various parts of the city.

*Candidates.* Since 1926 the electoral commission has been forbidden by law to sponsor or propose candidates. Meetings of the voters are held in the several factories, plants, and other electoral units or precincts, and a tentative list of candidates is submitted to the voters by the Communist cell and by committees of professional unions within the factories. The voters may suggest additional candidates or revise the list during the course of discussion. Candidates are scrutinized carefully, and are expected to address meetings and state their qualifications. Individual voters may also announce their candidacy and state their qualifications. Until the adoption of the new constitution, the elections were open and preferences were shown by acclamation or raising of hands. Now all elections are conducted by secret ballot.

The candidates are not all members of the Communist Party. In fact the party leaders in Moscow <sup>22</sup> and other cities are frequently warning the electorate not to put too many burdens on the shoulders of the Communists, but to elect reliable non-party men of the right social origin. It goes without saying that no person who is not known

<sup>22</sup> Simon, *op. cit.*, p. 4.

to be unquestionably loyal to the Soviet Government would be elected or tolerated after election.

It is interesting to the American observer to note the high percentage of electors who actually participate. In many cities the percentage is over 90, and since within the factories and offices every effort is made to induce every worker to vote, some industrial establishments report 100 per cent participation.

Within seven days after an election, a protest may be entered in regard to its regularity to the electoral commission of the next higher soviet. The latter may either confirm the election or order a new one, which is conducted by a newly appointed electoral commission. Delegates are expected to live up to their campaign promises, and in fact members of the city soviets may be recalled by their respective constituencies, in which event a special election is arranged.<sup>23</sup>

*Duties and privileges of city soviet members.* The various instructions governing the conduct of soviet members repeatedly emphasize the seriousness of the work of the deputies. They are warned that all deputies are obliged to take an active interest in the general work of the urban soviet, its committees and commissions. Not only must they attend to their official duties, but it is urged upon them to interest themselves in the various civic organizations. It is impressed upon them that as deputies they are in duty bound to attend all meetings of the municipal assembly, plenary sessions as well as sittings of committees and commissions of which they are members, and to carry out faithfully all their instructions. In no case must they absent themselves from such meetings without previously having given notice to the presiding officers. They must familiarize themselves with details of the work assigned to them to such an extent as to be able to make helpful suggestions for the improvement of its execution. Above all, they must keep in close contact with their constituencies, report to them on the activities of the city soviet and its committees no less frequently than every three months, and furthermore, take part, if possible, in all meetings or discussions of their constituencies and other organized and unorganized groups of working men and women.

In turn, the members of the local soviet may, on the request of the

<sup>23</sup> In Moscow some 15 delegates were recalled during the four years prior to 1936. Simon, *op. cit.*, p. 9.

city soviet or its presidium, be excused from their usual work in shops or institutions for the time necessary to carry on their duties as deputies, without the loss of the wage which they would have earned during that time. Deputies who are not employed as wage earners, such as housewives and independent artisans, are to be reimbursed for the time spent in exercising their official duties, at the rate decided on by the presidium of the soviet.

Deputies, upon show of credentials, are to have free access to all municipal institutions, undertakings, and officials. They are entitled to demand information and explanations, except that when information is of a confidential nature, the request must come from the presidium of the soviet.<sup>24</sup>

*Organization of the city soviet.* The first plenary meeting of the newly elected urban soviet is called by the electoral commission and presided over by the president of the previous soviet. At this meeting a new president, presidium, and credentials committee are elected. The report of the electoral commission is also heard at this time. Thereafter the city soviet meets at least once a month. Special sessions may be called by the presidium or on the request of one-third of the members. A three-day notice must be given to the deputies indicating the exact time and place of meeting.<sup>25</sup> Private citizens are allowed to attend the meetings, but only members may vote; one-half of the membership constitutes a quorum for all business.<sup>26</sup>

*The presidium.* Obviously, especially in the larger cities, the size of the city soviet precludes debate or discussion; therefore it is necessary for purposes of actual administration that the power and responsibility be concentrated in an executive committee. The Municipal Decree of 1925 provides that the actual conduct of city administration be delegated to a president and a presidium elected by the city soviet out of its own membership. The usual procedure is for the party to compile a list of candidates which is then submitted to the city soviet meeting as a whole. The members discuss the list and may propose changes; however, the party list is nearly always chosen. Members are eligible for reelection and sometimes hold their positions for several years.

<sup>24</sup> *Polozheniye o Gorodskikh Sovetach* (1925), Chapter 6.

<sup>25</sup> City soviets frequently meet at factories and shops for the convenience of members and private citizens.

<sup>26</sup> *Polozheniye o Gorodskikh Sovetach* (1925), Chapter 4.

The presidium may consist of a varying number of members, from eleven to seventeen, depending upon the size of the city. The presidium serves as a collegial city executive and between sessions of the soviet conducts the day-to-day city administration and executes all ordinances in the name of the city soviet. The body meets at frequent intervals. In practice, however, a group of three members of the presidium, variously known as the bureau of the presidium, the working trio, etc., represents the city in all its official business. This smaller collegial executive is generally composed of the president, his deputy, and his secretary. Since in the small cities an efficient trained executive personnel is lacking, the remaining members of the presidium are engaged in actual administrative work in the various departments. In the more important centers a technical staff performs the work of the usual city services supervised by members of the presidium.<sup>27</sup>

The presidium not only executes and carries out the decisions and policies of the city soviet, but for all practical purposes formulates all important action that must be taken. In most instances the plenary session of the city soviet merely passes on reports and proposals of the presidium and committees. This does not mean that cities have been freed from the administrative tutelage of the higher soviets, for the New Constitution provides that the executive organs are accountable not only to the delegates of the city soviet but also to the executive organ of the higher soviets.<sup>28</sup>

*Committees and commissions.* The decree of 1925 and subsequent legislation provided<sup>29</sup> for the appointment by the city soviet of permanent committees; namely, communal economy, financial-budgetary business, education, public health, and coöperative trade. Other committees may be appointed by local soviets in accordance with their needs. In most city soviets there are ten or more additional committees, known as administrative, cultural, sanitary, judicial, trade, social security, etc. Deputies may select the committee they prefer to join, but under some conditions they may be appointed to committees not of

<sup>27</sup> The Moscow city soviet elects an executive committee of some 70 members, called *Ispolkom*, which occupies a position midway between the presidium and the plenum and meets four or five times a year. This body is, however, not general in the cities throughout the Union.

<sup>28</sup> Article 101.

<sup>29</sup> *Sobraniye Uzakonenii* (1929), No. 11, Article 119.

their choice. Every deputy, however, must be a member of at least one committee, and that one should theoretically be in the line of work in which he is most interested or to which he is best adapted by training and experience. In addition to deputies, private citizens, such as representatives of professional unions, shop committees, and other organizations, may be drawn into committee work. The technical director of that department of city work which comes under jurisdiction of a particular committee must always be included in its membership. Experts and technicians may be invited to single sessions and may have a consulting voice in the deliberations and discussions. This is an indication that the expert and technician are being recognized to some extent in city administration of the Soviet Union.

The committees meet at stated intervals, and all committees elect bureaus of at least three members, with a chairman, deputy chairman, and secretary, which meet frequently. The bureaus supervise and guide in detail the activity of the committees. The work of the committees, in general, consists of preparing and examining projects to be reported to the presidium or city soviet. They may also inspect public institutions and enterprises, and report on their condition to appropriate authorities. Committees may appoint permanent commissions (sub-committees) to study in more detail particular departments and administrative branches within the jurisdiction of a given committee. They may also appoint temporary commissions for the purpose of preparing a particular project.<sup>80</sup>

*General powers of the city soviet.* The city soviet under present legal provisions exercises a combination of legislative, executive, and administrative functions. Although its powers are nominally extensive, it is not by any manner of means autonomous. There is a rigid supervision<sup>81</sup> of all its important activities, and nothing can be undertaken

<sup>80</sup> *Polozheniye o Gorodskikh Sovetakh* (1925), Chapter 5, Sections 45-61.

<sup>81</sup> Professor W. A. Robson takes exception to a similar statement made by the author in an earlier publication. However, in the course of his discussion he says: "My general impression in Moscow is that the center of gravity is in the town hall and the main initiating impulse comes from Mossoviet (Moscow city soviet), although central approval is continually required," and other similar statements. Furthermore, he states that Moscow is free to build according to its own choice and design, etc., while in the next sentence he notes the rigid regulation of schools, etc. No one would deny that the central government is encouraging initiative on the part of the workers whether they are in the city or the country, but certainly no one familiar with the Russian scene would attempt to deny that there is vigorous

unless expressly permitted by higher soviets or their executive committees. While the city soviet is authorized to issue regulations, these must be based on provisions of higher agencies and must harmonize with the line as laid down by the party. Before issuing an ordinance, the local soviet must ascertain whether or not it would conflict with enactments passed for that purpose from above. In all cases of doubt, higher soviets must be consulted. A provision made by a higher soviet on a given subject automatically voids the regulations of the lower on the same subject. Within these limitations, the city soviet may pass regulations for the purpose of carrying out administrative tasks delegated to it by higher soviet authorities, and for the maintenance of "revolutionary" law and order in the territory under its jurisdiction.

In the field of general administration, the city soviet is authorized to appoint electoral commissions, to direct the activity of ward soviets, to transfer to religious organizations buildings and properties necessary to their ritualistic usages, to supervise the activities of their religious groups, and to make sure that the law in regard to separation of church and state is being strictly observed. It further takes measures for the prevention of disasters such as floods, fires, etc., and renders assistance to the victims of such occurrences, forwards complaints by citizens against the rulings of city organs and city employees to appropriate authorities, and in some instances may institute hearings on the same. The city soviet directs the suppression of crime,<sup>32</sup> keeps records of vital statistics, is the custodian of municipal funds, recalls municipal judges and prosecutors,<sup>33</sup> and renders legal aid to the toiling population.

*Financial powers.* The financial and taxing jurisdiction of the city soviet extends to the making of estimates, and planning, confirming and administering the budget. It supervises the collection of taxes and assessments levied by the state and sees to it that the funds reach the proper authorities. For the needs of the community the city soviet is regulation and supervision from above. It is true, however, that in Moscow where some of the members of the city soviet are highly placed dignitaries of the central government and important Communists, the supervision in local matters is to outward appearance not as rigid as in the provincial cities. See Simon, *op. cit.*, Chapter I, p. 37, see also pp. 42, 43, and 49.

<sup>32</sup> The actual carrying out of measures is left to the *militisia* (police) and the G.P.U. (State Political Administration), now called the Commissariat of the Interior.

<sup>33</sup> This provision applies only to cities which are seats of governmental divisions.



permitted to levy and to collect municipal taxes, surtaxes, and assessments as authorized by law, and to petition higher authorities for subsidies and additional revenue. It may engage in the organization of credit and savings institutions, negotiate loans with state, coöperative, and private banks and with persons in the Soviet Union or abroad, and issue bonds and certificates of indebtedness.

*Promotion of industry and labor.* In the field of economic-commercial enterprise, the city soviet is authorized to manage existing enterprises and organize new undertakings (it may also transfer its establishments to lessees), and in general to encourage the development of industry and trade by assisting all coöperative organizations. In addition, the city soviet may organize and operate passenger and freight transportation and manage power houses, water works, disposal plants, and other public services; it may build communal dwelling places and distribute living space in accordance with provisions of the law.

The city soviet is charged with protection of labor, for which purpose it may compel private and public enterprise to observe the laws in regard to payment of wages and fulfilment of collective and individual contracts, and relieve unemployment by establishing, in agreement with labor organizations, employment agencies, public works, and eating places. It sees to the installation by various industries of safety devices and technical improvements for the betterment of labor conditions. It also enforces the law in regard to social insurance.

*Health, sanitation, and welfare powers.* In matters of public health the jurisdiction of the city soviet covers a wide and varied field of activity. It establishes and operates clinics and prophylactic stations and organizes campaigns for the eradication of social and vocational diseases. To that end it is enjoined to coöperate with health institutions established by higher soviets. It also provides recreation grounds for the encouragement of sports, and in general supports any movement that would promote the physical betterment of the people. The city soviet carries on sanitary inspection of dwelling places, laundries, courtyards, basements, streets, and other public places. For purposes of general welfare it may regulate the illumination of stairs and house numbers; order repair or demolition of buildings or parts thereof and removal of snow from roofs. It is also responsible for the condition of sidewalks, parks, playgrounds, water mains and sewers, cisterns



and wells, and issues traffic regulations for tramways and buses. From time to time the central authorities suggest to city soviets that they clean up all public squares, market places, parks, etc., within a designated time. They frequently order the city soviets to see that apartment houses employ janitors (*dvorniki*) if none are there. Such janitors, among other duties, must supervise the collection of garbage and clean the public privies. The central government may order city soviets to designate particular grounds for the dumping of garbage. The cities of late have been urged to protect parks, promenades, and public greens. The central government is especially emphatic in connection with the protection of city water supply, the establishment of sewage disposal plants, and the keeping of these services in good condition. The central authorities in recent years have also urged and frequently ordered the improvement of public baths and laundry facilities.<sup>34</sup> The authority of the city soviet extends also to the regulation of amusement places, moving pictures, restaurants, clubs, tea rooms, saloons, and the business hours of shops and stores. It distributes space at markets, fairs, and other places designated for trading. The city soviet, among other tasks, is also charged with the rendering of assistance to needy families of the Red Guards who have been killed in battle or in line of duty. It passes regulations for the protection of motherhood and infancy, and organizes institutions for care of the aged, the disabled, and homeless children.

The city soviet is instructed to make attempts to raise the cultural and educational level of the community. To that end it may organize and maintain general and special educational institutions, clubs, reading rooms, libraries, theaters, and lecture courses on political and general cultural subjects. It passes ordinances for the protection of historical landmarks, monuments, antiquities, and objects of art.<sup>35</sup>

The city soviet, if called upon, must provide quarters for troops and supply them with communal services in accordance with legal provisions. The law authorizes the city soviet to punish violation of its regulations by a fine of not more than one hundred rubles or by a sentence to forced labor for not over one month.<sup>36</sup>

<sup>34</sup> *Sobraniye Uzakonenii* (May 30, 1932), No. 44, Section 196.

<sup>35</sup> The city soviet must also take care of the cultural needs of national minorities within its territory.

<sup>36</sup> *Polozheniye o Gorodskikh Sovetakh* (1925), Chapter 3.

*Special position of larger cities.* When the circuits (*okrug*) were abolished in October, 1930, it was decided by the central government that in cities having a population of up to 50,000 the soviets were to come under the jurisdiction of the appropriate *raion* executive committees. Cities of over 50,000, that are industrially important and are culturally and politically ready, are designated as independent administrative-economic units. The city soviets of these urban centers are to come under the immediate jurisdiction of the presidia of the central executive committees of the appropriate union or autonomous republic, or the appropriate regional committee. A provision was made that this regulation be applied to cities of less than 50,000 population if they are economically, politically, and culturally important.

To the cities that have been designated as independent administrative-economic units are to be attached rural settlements within the *raion* only. These rural settlements are to organize village soviets in accordance with legislation in this respect. These communities are to take part in the election of the city soviets in accordance with established regulations. The order in which rural settlements are attached to cities is regulated by the central executive committee of the respective union republics. The city soviets are ordered to organize sections for the purpose of supervising the affairs of the rural settlements.

*Municipal finance.* Before 1933 the city soviets had to present their budgets to the executive committees of the higher soviets for examination, audit, and final decision. Since then city soviets have had the right to draft their own budgets without reference to higher authorities.<sup>37</sup>

The authorities in the higher soviets have the right, however, to decide whether certain properties are to be assessed for city or *raion* taxation, and they are also to have general supervisory authority in the matter of tax collection.<sup>38</sup>

In addition, from time to time, the central government makes assessments for special purposes such as cultural and housing needs, the amount of tax depending on income and occupation.

<sup>37</sup> *Fundamental Functions of City Soviets* (1933). It is not likely, however, that the municipalities have been freed from higher supervision in this connection.

<sup>38</sup> City soviets may, however, appeal rulings of higher soviets to central authorities, but while action is pending appealed decisions are not suspended. The Financial Decree designates in detail the classes of taxpayers and those exempted or granted reduction of taxes.

*Sources of revenue.* Cities are assigned the following sources of revenue:

I. *Taxes*, subdivided as follows:

1. Tax on business buildings.
2. Tax on dwelling places.
3. Tax on transportation.
4. Tax on amusements.
5. Tax on livestock and raw animal products.

II. *Surtaxes*:

1. Surtaxes on state business and trade taxes.
2. Surtaxes on state income tax.
3. Surtaxes on state tax levied on agricultural lands within city jurisdiction to an extent of not less than 40 per cent.

III. *Surcharges*:

1. Surcharges on fees paid to the state for licenses to sell alcoholic beverages and tobacco within city limits.
2. Surcharges on state notarial fees.
3. Surcharges on municipal court fees.

IV. *Other sources of revenue*:

1. Rents from dwelling places, business buildings, market places, and other establishments.
2. Earnings from city lands, parks, and other similar property.
3. Rents received for trading space on public squares, markets, streets, promenades, beaches, etc.
4. Earnings from municipal economic-commercial enterprises.
5. Rents from municipal real estate.
6. Revenue from enterprises and undertakings especially assigned to municipalities for that purpose.
7. Parts of profits from state insurance, especially designated by law.
8. Interest on municipal funds.
9. Sale of superfluous city property.
10. Surpluses remaining from the previous year.
11. Back taxes.
12. Profits from stocks in banking institutions and other corporations.
13. Regular and special grants and aids from state funds.
14. Income from special funds and endowments, and stated contributions from institutions and organizations.
15. Loans.<sup>39</sup>

<sup>39</sup> City soviets may negotiate with state coöperative institutions, and private persons in the Soviet Union and abroad; the latter, however, is out of the question at present. They may also issue bonds and certificates of indebtedness.

*Subsidies.* Subsidies and aids are generally granted by the state for the support of educational and medical personnel and agricultural experts in schools, hospitals, etc. The subsidies are increased or decreased in accordance with the financial condition of a given municipality. The ultimate decision as to the grant and the amount of such subsidies lies with the executive committees of the higher political units in which the cities are located. In exceptional cases municipalities may receive donations from the state to balance their budgets, provided they are entirely unable to raise funds themselves. Municipalities also have access to special funds and endowments of coöperative building associations and the fund in the name of V. I. Lenin, which is especially designated for the care of homeless children. Finally, there are two types of emergency funds, viz., federal and local. The federal emergency fund, which is made up of surtaxes to federal taxes and of stated sums subtracted from provincial and municipal income, is under the jurisdiction of the executive committees. Both emergency funds are to be used only in cases in which municipalities have given absolute proof of being unable to balance their budgets. This aid, however, is very seldom granted, and the municipalities applying for it are subject to a most rigid inspection.<sup>40</sup>

*Municipal expenditures.* Expenditures of cities may be divided into the following general items:

1. The support of city soviets, their presidia, and subdivisions of departments of the higher soviets designated for municipal work, municipal courts, prosecutors, and juries.
2. Payment of salaries of city *militsia* (police), and expenses in connection with criminal investigation, the upkeep of city jails, detention homes, communal buildings, properties, undertakings, welfare agencies, and fire departments.
3. Organization, equipment, and upkeep of lower professional technical schools for the city population; short technical courses for adults, elementary schools, children's homes, kindergartens, schools for adoles-

<sup>40</sup> Some Bolshevik municipal authorities suggest that the following sources of revenue should be transferred to cities: (1) profits from mineral resources within the jurisdiction of the cities; (2) parts of profits from state enterprises which have been delegated to city management; (3) taxes on incoming and outgoing freight, transported by rail or water; (4) fees paid on business transactions at various exchanges located in city territory. See Chugunov, *Gorodskiy Sovety*, pp. 145-147.

cents, and institutions for civic training; libraries, clubs, schools for adolescent and adult illiterates, and persons who are about to be called for military service; schools of political grammar,<sup>41</sup> city hospitals, clinics, first-aid centers, etc.

4. Expenses in connection with museums, art galleries, theaters, exhibitions, archives, and the organization of excursions for cultural-educational purposes.

5. Support of various municipal sanitary organizations and undertakings, prophylactic measures against social and contagious diseases, and activities for the suppression of prostitution and pauperism.

6. Expenses in connection with measures to safeguard motherhood, infancy, and children's health in cities.

7. Support of homes and training for the disabled.

8. Grants and subsidies to various local organizations for mutual help and expenses in connection with part payment of pensions to war veterans, their families, and the dependents of those killed in battle.<sup>42</sup>

9. Support of veterinary organizations and measures for the eradication of contagious diseases among domestic animals.<sup>43</sup>

The following municipal expenditures are paid from *raion* funds:

1. Expenses in connection with soviet elections.<sup>44</sup>

2. Organization, equipment, and support of institutions for mothers and infants, maternity hospitals, and hospitals for social diseases.

3. Disbursements in connection with the operation of agricultural and horticultural experiment stations.

The provincial funds finance the following undertakings:

1. The support of intermediary-technical schools which are not financed by the state.

2. Teachers' training schools and conferences.

3. The organization, equipment, and support of psychopathic hospitals, surgical and ophthalmological institutions, health resorts, con-

<sup>41</sup> Special schools for the study of history, civics, and social ethics from a Marxian standpoint.

<sup>42</sup> The state supplies part of the funds for this purpose.

<sup>43</sup> The Financial Decree instructs executive committees to authorize city soviets to widen their fields of activity only in proportion to the increase of their financial resources.

<sup>44</sup> This does not apply to the expenses in connection with the election to the city soviet itself, but to congresses of soviets only.

valescent homes, sanatoria, bacteriological institutes and laboratories, meteorological stations, various hydro-therapeutic sanatoria, agricultural and agronomic expositions and courses, dormitories and feeding stations for unemployed, and quarters for troops.

*Miscellaneous expenditures.* The city soviets must make the following provisions: the payment of loans and interest on indebtedness, sums designated for special funds, the meeting of unpaid bills of the previous year, capital to be used in the organization of local banking institutions and corporations, and the necessary legal reserve constituting the emergency fund and medical care of insured persons.<sup>45</sup> The law permits the city soviets to include in the budgets items for unforeseen expenditures, which must not, however, exceed three per cent of all disbursements. The city funds are administered by the financial agencies of the executive committee,<sup>46</sup> and must be deposited with sub-treasuries of the commissariat of finances.

Municipal finance, like all other phases of city administration in Soviet Russia, is still in the experimental stage. No doubt in time the central government will learn by experience that detailed control of all local activities tends to destroy initiative and eventually reacts disastrously upon city welfare. However, it is fair to state that the time is not ripe as yet in Soviet Russia to permit urban communes an existence unfettered by strict supervision and frequently even petty interference from above. No doubt as the years go by Russian cities will demand and obtain governmental status commensurate with their responsibilities.

*City planning.* Before the Revolution, city planning in Russia was given little attention. Since then a vast amount of systematic work has been done in this field by the State Planning Commission at Moscow, by planning commissions in the constituent republics and in the provinces, and finally by the city soviets.

All city land is divided into three categories: residential sites, land for public use, and sites for industrial districts. Residential sites are divided into lots in accordance with accepted projects of city planning. In the distribution of territory for various subdivisions and the con-

<sup>45</sup> These accounts are kept separate and are not included in the budget.

<sup>46</sup> The practical administration of the funds is in the hands of the directors of the municipal branches of executive committees.

centration of population in a given district, the economic character of the population, the character and type of local buildings, topographical peculiarities, and the sanitary and other conditions of the entire city in general and separate districts in particular may be considered.

The planning and widening of streets and squares and other places of public use, and laying out of new streets are executed in accordance with planning projects. The city soviets are empowered to correct and alter lines of built-up sections and thoroughfares when the lines are broken, uneven, or present other inconveniences from the standpoint of planning or sanitary utility, provided this reconstruction involves not more than ten per cent of the district and does not necessitate the tearing down or transfer of buildings. All misunderstandings are settled by the provincial executive committees. The technical rules for planning, the mode of execution, and the norms for the distribution of residential districts are regulated by special rules of the State Planning Commission (*Gosplan*). In the case of cities which previously did not have definite planning regulations, or whose plans have been disregarded, an exact survey of city territory becomes necessary, to be followed by the formulation of an exact plan of city building.<sup>47</sup>

Vacant lots in built-up districts must be left to the use of those persons and institutions that occupy the adjacent buildings. The transfer of those lots to other persons or institutions may take place only by sublease, after a previous agreement with the city authorities in accordance with established rules. With the transfer of buildings, however, also goes the land. In case of fire or other catastrophes, the tenants of the destroyed buildings retain the use of the land on condition that they rebuild within a period of three years.

Thoroughfares, such as squares, roads, boulevards, parks and gardens, which are used for rest, amusement, and educational purposes by the city population; cemeteries;<sup>48</sup> dumping places for snow and garbage; and streams, lakes, and bathing beaches within city limits, are considered public places to be used by the entire population.

*Housing.* From the very first days of its existence the Soviet government attempted to ameliorate the unspeakable living conditions

<sup>47</sup> More than a hundred cities in Soviet Russia have already worked out definite plans which are followed in carrying out of new constructions.

<sup>48</sup> The city may charge for lots in cemeteries.



of the lower classes and proceeded in its own way to carry out its idea through nationalization and municipalization of private property. By 1929, the total value of municipalized property amounted to 8,660,000,000 rubles, in which is included expropriated property and additional buildings constructed since the Revolution. This sum constitutes 60 per cent of the value of all city property in the Soviet Union, which is estimated at 13,700,000,000 rubles. Not all private property, however, was confiscated; hence up to 1929 considerable numbers of persons were renting out dwellings from which they derived an income. But in a decree issued in 1929 the right of private persons to rent dwellings was still further limited, and the government at this writing has practically liquidated the entire matter of renting by private persons. The rents in cities of over 50,000 have been estimated to run from thirty-five to forty-one kopeks a month for one square meter of floor space. The average rent paid by a working man in Soviet Russia constitutes 9.7 per cent of his income. The minimum living space for one person as decided upon by the commissar of health is to consist of 8.25 square meters.

The terrifically overcrowded living conditions of the Soviet Union are well known to all who have ever visited that country. In fairness to the Soviet government, however, it must be said that desperate efforts are being made to overcome this condition. Model apartments for working men are being erected in cities all over the Union, especially in Moscow and the new industrial cities. Furthermore, individual workers are encouraged to erect homes, though these cannot be used for profit through sale or lease. Funds which are to be distributed to housing coöperatives are set aside in municipal banks; and building materials may be obtained by workers through central or local housing coöperative associations. The builder has to make an initial investment of thirty per cent of the total cost of the building and comply with certain minimum standards established by the State Planning Commission. Loans are not to extend beyond a period of ten years. The land upon which the houses are to be erected is leased for a period of 50 to 65 years. The building of apartments for groups of four to five families is also encouraged. The time limit for which land might be leased was set, in order not to interfere with the future expansion of the city and the carrying out of plans that may call for the use

of the occupied land. Local soviets and executive committees are urged by the central authorities to give their attention to the task of increasing dwelling places and of razing broken-down structures and replacing them by new buildings. The central government recommended unification of plans for the building of dwellings with due allowance for territorial peculiarities. The various territorial units were informed that their plans for building of dwellings must contain (a) financial estimates with due consideration of local and central source, (b) estimates of available skilled labor and suitable materials, and (c) the rational division of living space in a satisfactory manner to all concerned. The Central Bank of Communal Economy and Housing was instructed to issue long term credit for the purpose of developing such undertakings and to guarantee their being carried out.

In addition, workers and employees were urged to build on a collective basis. The health department was to supervise the sanitary arrangement of these undertakings. In general, attempts were to be made to create better housing conditions from a legal, sanitary, and financial standpoint.

On October 18, 1928, the organization of a Central Union of Housing Coöperatives was confirmed by the Central Housing Union of the R.S.F.S.R. (*Centrozhilsoyuz*). The purpose of this organization is to unite unions of housing coöperatives and large house-building organizations for the mutual activity of their members, and to give directions in the development and strengthening of the housing co-operative affairs in the R.S.F.S.R. for the purpose of serving their economic needs.<sup>49</sup> Between 1928 and 1935, the Soviet Union added 1,275,661,828 square feet to its overcrowded housing space. The Soviet statisticians estimate that the Soviet government has spent from the time of its inception to 1937 about eleven billion rubles on housing.<sup>50</sup>

*Street paving and lighting.* The Soviet Union, in general, is probably the most backward country in Europe as far as public services are concerned. Thus, at the beginning of 1928-29 only 20 per cent of the streets, squares, and thoroughfares in the 425 cities of Soviet Rus-

<sup>49</sup> *Sobraniye Usakonenii* (1929), No. 10, Article 111. *Sobraniye Usakonenii* (1929), No. 1, Section 1.

<sup>50</sup> The present exchange rate is 5 rubles to the dollar.

sia proper were paved, and these mostly with cobblestones. It is estimated that the paving of streets in all cities of the Union would cost 5,632,000,000 rubles. In accordance with the Five Year Plan, only 577,400 rubles were appropriated for the paving of streets, which means that unless most of the Russian cities undertake this task for themselves, the smaller cities in Russia will remain unpaved for a great many years to come. Since most of the transportation in cities and villages in the Soviet Union is still by animal power, it will probably be a long time before any advance is made in the direction of street paving, but if the Five Year Plan for the motorization of street traffic has been carried out, the government may awaken to the necessity of street paving to prevent enormous losses in damaged machinery on account of impassable public thoroughfares.

Street lighting in the Soviet Union is still in a primitive condition; in 1929 only 240 cities in Soviet Russia had any street illumination, and 85 cities had no street lighting at all. The normal illumination in Western Europe is twenty to twenty-five lights to each square mile. The average number of street lights in the cities of Soviet Russia is two lights for one square mile. It is estimated that several billion dollars would be needed to enable Russia to emerge from the medieval darkness. The Five Year Plan, however, allotted to the entire Union only forty to forty-two millions of rubles for this purpose, authorizing an increase of 30 per cent in street lighting in the R.S.F.S.R., and 123 per cent in the cities of the Ukraine.

*Parks.* In 1930 there were only 392 public parks and 394 promenades and greens in the 842 towns of the Union, but as far back as 1925 instructions were issued for the increase of parks and greens. The Five Year Plan appropriated for that purpose in Russia proper twenty to twenty-two million rubles, and for the Ukraine five and one-half million rubles, providing for an increase in the number of parks of 33 per cent.

*Water supply.* In 1934 only 328 towns in the entire Soviet Union had modern water supply plants, but even then in some cities only a part of the population was being served. In the most densely populated cities of Russia proper, only 179 cities had water plants, and in these cities only 11.5 per cent of the dwelling places were connected with the water works. Between 1902 and 1907 only 70 water plants

were built in Russian cities, which accounts in some measure for the backwardness of the present time. In accordance with the Five Year Plan, four hundred million rubles were appropriated for this purpose, which should make it possible to introduce modern water plants into 117 cities and to expand those already in existence. This money was to be used for the construction of water mains, while the connection of dwelling places with the water mains will have to be done at the expense of the individual housing administrations.

*Drainage, and garbage removal.* The sewerage system in the Soviet Union is still in a primitive condition. In Russia proper in 1934 there were only 22 cities that had sewage disposal plants, and only 9.2 per cent of the urban houses in Russia proper had sewer connections. The sanitary situation, then, in the Soviet Union is an abominable one. In 506 cities of Soviet Russia, there accumulates every year about sixty million barrels of solid sewage, only five million barrels of which are taken care of by regular sewage canals. The rest of it has to be disposed of by sanitary brigades. But in 1934 in only 172 cities were such brigades to be found; that is, only 22 per cent of the accumulation of sewage was being disposed of in a more or less sanitary manner. According to the data available, only 117 cities have communal brigades for the disposal of garbage, and it is estimated that only 8.7 per cent of accumulated garbage can actually be disposed of. It would take three billion rubles to erect sewage disposal plants in all the cities of the Union. But only 150 million rubles were apportioned for this purpose by the Five Year Plan.

*City transportation.* The electric tramway is still the predominant means of transportation in the large cities of the Union. In 1929, 38 cities had such service. In accordance with the Five Year Plan fifteen additional cities in Soviet Russia and four in the Ukraine are to build tramways. In 1934 there were only 1,100 mechanized buses in 82 cities in Soviet Russia. Buses are more advantageous and cheaper, yet because of the conditions of city streets, they cannot be made use of. The Five Year Plan set aside 245 million rubles for that purpose in Russia proper and in the Ukraine fifty-two million, and it was expected that at the end of the Five Year Plan all cities having a population of 20,000 people would have such means of transportation. Moscow,

moreover, has recently completed a magnificent subway, the first in Eastern Europe.

*Public baths and laundries.* The majority of the Russian homes have no running water, and hence there is an absence of bath tubs and showers. For this reason, public baths are the only suitable alternative. Nevertheless, 40 per cent of the cities in the Soviet Union have no such establishments. For every thousand inhabitants in the cities served, there are only nine or ten public baths. In the cities of the Ural region, there are only five bathing places per thousand people. There is a constant increase of such establishments, however, and in 1931 the expenditure for this purpose was raised to thirty-two million dollars. Mechanical laundries are still in the stage of experimentation, and are to be found only in such large cities as Moscow and Leningrad. Even there they serve only institutions, hospitals, hotels, and the army. Efforts are being made to increase the number of such laundries.

*Electricity supply.* In the last few years electricity has displaced all other means of street illumination in the large cities. In Soviet Russia proper, without the autonomous republics, 311 cities have electricity; that is, 73.3 per cent of the cities are using this power. If some of the suburbs are counted in the percentage, the total is increased to about 82.1 per cent. It is well known that one of the fundamental policies of the Soviet régime is the electrification of the country, an ideal, however, still far short of fulfilment.

Although considerable progress has been made in improving public services in the U.S.S.R. during the past four years, exact figures indicating recent development are not available. The first Five Year Plan was completed in 1932 and the results were so encouraging to the Bolshevik leaders that a second Five Year Plan was launched in 1933. Although the second Five Year Plan terminated in 1937, the third Five Year Plan, under which the country had then been operating for some time was not announced until January 30, 1939. No information is available as yet of the provisions of the plan for the improvement of municipal services. However, it is well to keep in mind that the Soviet Union is, as Stalin said in 1931, from fifty to one hundred years behind other industrialized countries. For this reason, any improvement that may be made in public services in the next few years cannot be compared with development in the United States or the more

progressive European countries. Moreover, amid the present European tension, fast pursuit planes, anti-aircraft guns, and bomb-proof cellars have become far more important "public services" than parks, electric lighting, etc.

#### *Sec. 4. The Village Soviets*

When the Bolsheviks came into power, they swept away the institutions of the past and established soviets in the villages similar to those existing in the higher territorial divisions. Furthermore, the new authorities were not at all in favor of permitting the wealthier elements to take the leadership, hence committees of poor peasants were organized (*kombedy*), consisting of returned soldiers and unemployed factory workers, who had received some experience in soviet organization either at the front or in the urban centers. Although originally organized as relief committees for the purpose of expropriating surplus grain and farm machinery from the rich peasants, these committees eventually took over authority and dominated the soviet machinery of administration in the countryside. This resulted in a great many difficulties, and in order to eliminate friction, a mixed system of soviets was organized composed of "rich" and poor peasants respectively. When the All-Russian Executive Committee issued in November, 1918, a decree for a new election of village soviets, the elections were in charge of the committees of poor peasants, who were supported by the middle peasants and encouraged by the higher authorities. The outcome was a victory for the poor elements. Since the elected village soviets were now composed of the poor and middle peasants the committees of poor peasants were abolished, and the soviets became the main organs of administration in the villages, although in the more remote settlements the old system of government remained intact for years. This is not to be understood as meaning that the villages were governed in an orderly manner. Bitter, and frequently bloody, contests were waged between factions and groups, and at one time the conditions in the villages approximated chaos. The central government, fighting a desperate battle for existence, could not allot very much time to village affairs, and the local elements, consisting mostly of peasants entirely devoid of experience in self-government, were not able to carry on an orderly administration. Finally,

after several years of disorder, the All-Russian Central Executive Committee issued a decree on October 16, 1924,<sup>51</sup> laying down instructions for the formation of village soviets consisting of elective bodies of from three to fifty members and a presiding officer, the latter to take charge of all affairs necessary for the carrying out of the decision of the assembly and higher organs of government between meetings of the village soviet.

*Legislation on village organization.* From time to time after 1924, the central government issued supplementary legislation in regard to village soviets, but for the last few years it has been felt that this makeshift regulation did not meet the new problems arising in connection with collectivization of agriculture. In addition, the central authorities thought that the village soviets as such were far from taking the leadership in the matter so dear to the hearts of the Bolsheviks—collectivization—and accused them of standing aside from the movement. Hence, after several years of discussion, a new village soviet decree was issued on February 7, 1930, which makes clear in emphatic language that the paramount and fundamental duty of the village soviets is to originate productive plans for collectivization and to carry them out faithfully. They must make a strenuous effort to "liquidate" the *kulaks* as a class and organize the activities of farm hands (*batraki*), poor (*bedniaki*), and middle (*seredniaki*) peasants for the purpose of "further raising of agriculture and its socialistic reconstruction." The new decree emphasized work among the masses of poor peasants and farm hands, since the authorities admitted that the village at that time was far from being Bolshevik in its composition. In order to facilitate the execution of the tasks above mentioned, the presidium of the Central Executive Committee of the U.S.S.R. issued the new decree directing the central executive committees of the constituent republics to organize the village soviets in accordance with prescribed fundamental principles. When on January 1, 1931, the R.S.F.S.R. and other constituent republics issued village soviet decrees, the principles of the Union decree were naturally incorporated in them.

*Village soviets.* In accordance with the Union decree, separate village soviets are formed in all villages except in small settlements, several of which can be united into one village soviet without damaging

<sup>51</sup> *Sobraniye Uzakonenii*, No. 82, Section 827.



thereby the economic, political, and cultural life of the small communities. In regions of complete collectivization where several villages are united into one collective farm, the structure of the village soviet in principle coincides with the primary organization of the respective collective farms. At the same time, however, village soviets are to be maintained in all villages as heretofore. In determining the limits of village soviets, the density of the population, the nationality of the inhabitants, the condition of the roads, and the means of communication must be taken into consideration. The New Constitution of the R.S.F.S.R.<sup>52</sup> provides for the election of members of village soviets by voters of various groups of the toiling population in accordance with norms established by the Constitution of the U.S.S.R. In Soviet Russia proper, one deputy is elected for not less than 100 and not more than 250 electors.

Provision is made for a recall at any time of individual members who have not justified the confidence of their voters, and for the election of new members in special elections. The New Constitution of the U.S.S.R. provides that members of village soviets shall be elected for two years throughout the Soviet Union. The village soviet elects from among its members an executive committee: chairman, vice-chairman, and secretary, who serve as executives and are in charge of current activities.<sup>53</sup> In small settlements, no executive committee is elected and the chairman, vice-chairman and secretary exercise the executive and administrative functions.<sup>54</sup> In the larger communities a presidium may be elected; in Russia proper no presidium can be elected unless the membership of the soviet consists of not less than 15 persons. For the purpose of supervision of the financial, economic, and other activities, a revision commission is elected at the time when the membership of the soviet is voted for. This commission exercises control uninterruptedly, maintaining close contact with the voters, and in case of necessity, it informs them of the shortcomings in the work of the village soviet.

*Rights and duties of the village soviets.* The village soviet is the general local authority within its given territorial limit. It is within

<sup>52</sup> Article 145.

<sup>53</sup> The secretary does not necessarily have to be a member of the village soviet.

<sup>54</sup> The New Constitution of the U.S.S.R., Article 100.

the competence of village soviets to decide all questions of local (village) importance, but the village soviet decree insists that the local soviets shall also discuss affairs of *raion*, regional, republican, and state importance. In practice it was found that the average village soviet is not only incapable, through lack of experience and information, to discuss general questions of statecraft, but the work of local significance is frequently so heavy that there is no time left to consider wider problems. The local soviets have control within the limits of their territory of the execution by all citizens and officials of the laws and instructions of the central government. They must extirpate all attempts to interfere with the execution of measures taken by the central government and stop all violations of the proletarian class policy in carrying out of laws and measures. This is especially true in regard to the liquidation of the kulak element and the attempts of this class to counteract the policy that is destroying it. The village soviets have the authority to issue obligatory ordinances within their competence as established by law and to impose administrative penalties and fines for their non-fulfilment. In addition the village soviets have been given the authority to establish village courts, which are to have jurisdiction over matters affecting settlement of property, labor conflicts, and minor criminal cases.

*Agricultural activities of village soviets.* The decree orders the village soviets to take over the direction of the socialistic reconstruction of agriculture by the organization of collective farms and other coöperative enterprises, and to be responsible for the highest possible increase in the yield of fields and sown areas, as well as the development and socialization of cattle-breeding, both in collective farms and on individual household farms. They must support the soviet farms (*sovchozy*) and their socialistic state enterprises. In order to enable the village soviets to direct efficiently the organization and work of collective farms, they are ordered to demand periodical reports concerning the activity of all institutions and enterprises participating in the organization of collective farms as well as the collective farms in the territory of the village soviets; to examine and confirm the plans of collective farms and other coöperative organizations, and in case of their non-compliance with general state plans and production tasks, to give direction for changes; to pass resolutions and ratify requests of

collective farms for credit, inventory, etc.; to direct the building work of the collective farms such as dwellings, various buildings for economic purposes, clubhouses, hospitals, etc.

In communities of territories that have not been wholly collectivized, the village soviets must take charge of increasing the production of individual poor and middle farms to maximal amounts by organizing primary coöperative associations, by introducing necessary agricultural improvements, and by increasing the sown area with a view to preparing the individual farms for quickest possible collectivization. They must also explain the tasks of collectivization and prepare the way for its realization. The village soviet must organize the masses of farm hands and the poor and middle peasants for the struggle against the kulaks. In the non-collectivized regions the village soviets must endeavor to eliminate the kulak element and bring about total collectivization.<sup>55</sup>

The village soviet controls and supervises the correct and reasonable utilization of land by collective and individual farms. It has the right to open litigation for the confiscation of land in charge of organizations and persons who are violating the laws in regard to the nationalization of land and are not fulfilling the production plans, imposed tasks, and obligations to the government. The village soviets supervise and direct the entire work of agricultural societies in their respective territories and have authority to cancel, change, and confirm the resolutions of land societies, which are unions of poor and middle peasants organized in the early days of the Bolshevik régime. In regions of complete collectivization, the land societies are to be entirely liquidated and all their rights and duties to be transferred to the village soviet. The village soviet, furthermore, must supervise the timely fulfilment of all obligations to the government by collective farms and peasant farms not as yet collectivized in the matter of the collection of the agricultural tax, repayment of debts, delivery to the government of marketable products, fulfilment of contract and production plans, and tasks in connection with the grain procurement and sowing campaigns.

*Functions that concern labor.* The soviets supervise the correct and reasonable utilization of inventory in accordance with the tasks of the socialistic reconstruction of the village. They have control of the

<sup>55</sup> The kulak element has practically been eliminated by collectivization.

correct utilization of the labor of the agricultural-technical personnel and the organization and improvement of labor discipline in collective and State farms. They must see that the laws and regulations concerning the protection of labor, wages, and collective and labor contracts, and other measures introduced by the central government with regard to the organization and protection of labor by state and public organizations and by individual persons are carried out. The village soviets are responsible for the enforcement of labor laws and for holding to account persons guilty of violations. The village soviets also have a right to direct the organization of works of various cultural establishments such as libraries, clubhouses for collective farmers, schools, clubs, nursing homes, public dining rooms, hospitals, and other sanitary establishments, etc.; to organize the public services of the village, such as water supply, roads, communication, etc.; to improve the living conditions of the toiling population, to raise the level of social education, and to reconstruct the cultural life on socialistic principles. The village soviets have control over the practical execution of the laws concerning social security of the peasants and administer various privileges granted by law to Red Army soldiers, sailors, former Red Army soldiers, members of the Red Guard, and their families. The village soviets are to take measures to support and accelerate the collectivization of the farms of the toiling peasants belonging to the above-enumerated categories.

*Organization of the village soviet.* The village decree provides that various sections are to be formed for the purpose of inducing the broad masses as well as the members of the village soviets to take part in the everyday work of the village soviet. The numbers and names of the sections are to be determined by legislation of the constituent republics, but they must be constituted in such a manner as to comprise the most important parts of the work of the village soviets. In Russia proper, the law provides for the obligatory organization of the following sections: agricultural, general as well as special work of women, cultural, educational, financial, trade-coöperative, and general communal life. Other sections may be organized, depending upon the local conditions. In villages and in rural settlements that are not the seats of soviets, sections are formed. In territories where collective farms or production divisions of large collectives or important indus-

trial undertakings are located, groups of deputies must be organized. The work of the agricultural section in a village soviet is similar in its structure to the production conferences. The principal tasks of this section are the organization and work of collective farms, the organization of labor, standard of life, and cultural-educational work. By the decree of 1924, as amended by subsequent legislation, an auxiliary organ for the protection of property and public peace was created in the office of village executive. Village executives are appointed in rotation by village soviets for a period ranging from two to three months. Their numbers vary: thus in territories of complete collectivization one for each seventy-five families is appointed; in territories of partial collectivization one for each fifty households is designated. These officers, who might be called village constables, are subordinate and responsible to the city soviets. Persons who are disqualified from holding these positions pay a tax in lieu of serving. In general their duties are not unlike those of American village constables and night watchmen.

*Village finance.* Since 1932 the village has been authorized by law to have an independent budget. The budget of the village soviet must make allowances for administrative, economic, social, and cultural tasks of local importance, and must make arrangements for the maintenance of the village soviets, local education, sanitary establishments, pensions, roads, communications, communal work, and the settlements and expenses in connection with the development of agriculture and maintenance of property and establishments under the jurisdiction of the village soviets.

The revenue for village expenditures is to be derived from the following sources: (1) incomes from property and enterprises of local importance in the territory of the village soviets, including revenues turned over by the agricultural societies and other organizations to the village soviets, according to Article 52 of the "Fundamental Regulations Concerning Land Distribution and Utilization"; (2) local taxes and dues collected in the territory of the village soviet; (3) contributions to local funds from the consolidated agricultural tax, collected in the territory of the village soviet according to norms established by the legislation of the constituent republics, which must not be less than 30 per cent of the total amount of the unified agricultural tax col-

lected in the territory of the village soviet; (4) contributions to local funds from government revenues, according to the legislation of the constituent republics; (5) contributions to local funds from state loans placed in the territory of the village soviet, according to norms established for each separate loan at the time of its issue; (6) funds created by collective farms for the improvement of cultural and educational institutions; (7) contributions and revenues for special purposes, transferred to the budget of the village soviet by resolutions of collective farms; and (8) revenues from self-assessments. These revenues must be spent by the village soviets only for purposes indicated in the resolutions of the general meetings of citizens. In accordance with legislation, this assessment in Soviet Russia proper may be made only with the consent of a general meeting at which 50 per cent of the inhabitants having the franchise must be present. A majority is sufficient for this decision. If by lack of attendance a second meeting has to be called, the presence of one-third of the voters is sufficient. The assessments are usually made for cultural and economic purposes of a public character, such as the building and upkeep of cultural, educational, and health institutions and organizations for social security; agricultural establishments, such as agronomical and veterinary institutions, etc.; building of roads; fire protection; public services, such as public baths, wells, ponds, cemeteries, etc.; employment of watchmen.

These assessments are levied on individual and collective enterprises and on citizens residing in the village who are not employed in agriculture. The tax may be paid in money, or in kind, or in labor. In no case must this special assessment be used for the payment of salaries of local officials, police, village executives, etc. Furthermore, the items in local budgets designated for cultural, social, and economic needs of the population may not be decreased with expectation that the self-assessment tax will supply the deficiency. The amounts obtained by self-assessment may be incorporated in the general fund of the village soviet, but in making out the budget, provisions must be made for the operating expenses in connection with undertakings that have been built by funds raised by self-assessment. In the R.S.F.S.R. the law assigns to the village budgets the incomes from all state properties and undertakings of local significance that are within the territory of a given village soviet and that serve predominantly the local popula-

tion. Under this heading come communalized dwelling places, and business and industrial structures. The village soviets are also entitled to incomes from communal-commercial undertakings such as mills, smithies, workshops, etc.; from land, meadows, pastures, and vegetable gardens, market places, and similar places leased for trading purposes; and from fishing rights, sand pits, stone quarries, and other similar profitable ventures. In addition, the village soviet is entitled to the rents from public reserve lands leased to agricultural associations in accordance with legal provisions.<sup>56</sup>

The village soviet receives 100 per cent of the tax on all notarial transactions within the village territory, the tax on land registration, and 30 per cent of taxes paid by private enterprises located within the village territory.<sup>57</sup> The village soviets also receive the tax imposed on persons disqualified to serve as village executives; the special property tax on large manufacturing plants employing at least thirty-one workers and using motor power equipment, and on plants employing not less than fifty-one workers without motorized equipment; and not less than 60 per cent of the consolidated agriculture tax.<sup>58</sup>

The village soviets register the purpose of assessment, collect the taxes and dues, and perform all other work in connection with taxation in accordance with legislation of the constituent republics. The village soviets furthermore organize the placing of state loans and explain to the electorate the importance of these loans. They assist the holders of bonds in the fulfilment of loan operations as provided by law.

In general, in recent years the village soviets have received wider

<sup>56</sup> *Land Code*, Article 28.

<sup>57</sup> This item of the budget has practically vanished.

<sup>58</sup> *Sobraniye Usakonenii* (1929), No. 3, Article 32; No. 1, Article 3; No. 28, Article 292. In addition, from time to time the central government of its own accord levies assessments for special village purposes such as housing and cultural welfare. Thus in 1931, and again in 1932, the government assessed the rural population in the following manner:

<i>Monthly income in rubles</i>	<i>Workers, employed in coöperative crafts, and mechanics therein, total tax in rubles per person</i>	<i>Independent workers, mechanics, total tax in rubles per person</i>
Above 40 to 75 .....	8	12
Above 75 to 125 .....	15	25
Above 125 to 175 .....	25	45
Above 175 to 225 .....	40	70
225 and upward .....	76	130



powers in the matter of local finance; thus they are permitted to use their own discretion in the matter of transferring funds from one item of the budget to another, as for example—money appropriated for reading huts may be in case of necessity applied to the support of village schools. In a limited way village soviets have some authority over the budget of institutions that are not under their jurisdiction but happen to be located in their territory. The village soviets are warned to avoid deficits, and urged that the funds collected be turned over daily to the State Savings Bank.<sup>59</sup>

### *Sec. 5. Provincial Government*

The present organization of provincial government is the result of the work of a commission appointed in 1919 by the All-Russian Central Executive Committee to formulate a basic plan for the administrative-economic reorganization of the country. The commission brought in a plan upon which was based the work of reorganization begun in 1923 and completed in 1929. In accordance with the original plan, every administrative division was to be a homogeneous unit, both from an economic and natural standpoint, and it had to be a complete unit, separate from the surrounding divisions, and with no overlapping of areas. Within this unit there were to be formed, in accordance with the same principle, sub-regions or circuits (*okrug*) which were to embrace a territory considerably smaller than the old *guberniya* (province). In addition, each *okrug* was to be divided into *raions*, each of which was to cover a territory on the average slightly smaller than the old *uyezd* (district). Between the years 1923-29 the central government proceeded to reorganize some parts of the country where the old divisions were abolished and the new order introduced. In other sections the old structure was left intact. Hence before 1930 there was a confusing situation in which the following territorial formations were recognized: regions or territories (*oblast*, *krai*), provinces (*guberniya*), circuits (*okrug*), districts (*uyezd*), *raions*, and cantons (*volost*). Thus some of the old units from tsarist days continued to exist in places alongside of the new units.

<sup>59</sup> *Osnovnye Polozheniye ob organizatsii selskikh Sovetach v. S.S.S.R. ot 3 fevralya 1930 g.*, *Izvestiya* (1930), No. 65. *Polozheniye o selskikh Sovetach R.S.F.S.R. ot 1 yanvara 1931*; *Vlast Sovetov* (March, 1931), No. 8.

In 1930, after several years of experimenting, the sixteenth Congress of the Communist Party definitely decided to put into operation a new division for provincial government, and the old triple division of *guberniya*, *uyezd*, and *volost* was replaced by a new three-tiered division of *oblast*, *okrug*, and *raion* (four, counting the republic). This new division decreased the provincial units in comparison with the year 1917 from 14,592 to 3,860, and in Russia proper, in comparison with the year 1922, from 13,051 to 2,451. This reorganization, however, proved unwieldy, and the sixteenth Party Conference decided to create several experimental territories in various parts of the country where a scheme was tried out that eliminated the *okrug* (circuit).<sup>60</sup> When the sixteenth Party Congress met in June, 1930, a decision was passed to eliminate the *okrug* and establish the following administrative-economic divisions of the Union: republic, *oblast* (or *krai*),<sup>61</sup> and *raion*.<sup>62</sup> In those republics that had no *oblast* division (as in the Ukraine), only the republic and *raion* were retained.

*The raion soviets.* The *raion*, which was to take the place of the *volost* and *uyezd*, is considerably larger in extent than the former lower divisions. Before the adoption of the New Constitution, the highest organ of authority within the territory of the *raion* was the *raion* congress of soviets composed of delegates of all soviets within the territory of that division. Since that time, the members of *raion* soviets are elected directly by the voters of that political unit for two years. One deputy represents from 500 to 1,500 inhabitants, depending upon the size of the *raion*. While in some instances there are considerable numbers of non-party members in the *raion* soviets, all responsible positions are held by party members. Between meetings of the *raion* soviet, an executive committee, which is elected by the soviet, exercises the superior authority. This committee is composed at the highest of 45 members, and provision is made also for the election of alternates (candidates) equaling one-third of the total membership. In practice, the presidium, composed of not more than nine members and four alter-

<sup>60</sup> This should not be confused with the national *okrug*, which is a unit inhabited by a racial or national group not numerous enough to form an autonomous region.

<sup>61</sup> This *oblast* should not be confused with an autonomous *oblast*, which is a territory inhabited by a racial or national unit not numerous enough to form an autonomous republic.

<sup>62</sup> Not to be confused with the city *raion*, which is a city ward.

nates elected by the executive committee, is in charge of the conduct of *raion* administrative affairs. The New Constitution provides for the election of a chairman, vice-chairman, and secretary.<sup>63</sup> Since the *raion* soviet meets at intervals of several months, the executive committee exercises the functions that are by law assigned to the soviet. Some matters, however, are expressly reserved for the exclusive jurisdiction of the soviet; namely, (1) confirmation of plans worked out by higher authorities in the field of economic, social, and cultural affairs; (2) the confirmation of the *raion* budget and the examination of all local budgets within the *raion* territory; (3) confirmation of reports of the execution of planned projects and proposed projects; (4) the confirmation of assessments and approval of assignments of incomes and expenditures among the *raion*, village, and urban soviets, and also the distribution of property among the various units of the *raion*; (5) the examination of reports on the work of the *raion* executive committee; (6) the election of the *raion* executive committee. Yet in spite of the legal provisions, with the exception of fiscal affairs and the election of executive committees, it is the executive committee that exercises all aforementioned functions and not the soviet itself.

The law prescribes that every *raion* executive committee shall have the following sections: (1) soviet construction and control of execution; (2) industry, labor, and supplies; (3) agriculture; (4) fiscal budgeting; (5) public education; (6) health. These sections consist mostly of the "toiling" population outside of the membership of the soviet. The ultimate purpose of this arrangement is to induce the general masses to enter into the work of the *raion* administration. The technical staff of this administration is centered in departments attached to the executive committee, which are designated as (1) general, (2) agriculture, (3) planning-statistical, (4) *raion* workers and peasant inspection, (5) police and criminal investigation.

*Raion personnel and administration.* The law further provides that specially trained officials shall be employed in connection with the administration of the following affairs: (1) local economy and road building, (2) supplies, (3) public education, (4) health, (5)

<sup>63</sup> The New Constitution, Article 99.

labor, (6) social security, (7) military affairs, (8) physical culture.<sup>64</sup> It is recommended that every *raion* form a section for the betterment of labor and the well-being of women workers, both agricultural and industrial.<sup>65</sup>

The *raion* administrative machinery was at first operated under difficulties. The chief obstacle in this government division as well as in others was the lack of trained workers. In a survey of 900 employees serving as secretaries and technical advisers in connection with *raion* executive committees, it was found that the majority consisted of young people who entered the party between 1926 and 1931. Almost one-third of them had no practical experience in administrative work. In the lower units of government, such as the villages, the situation was still worse. The superior authorities are advocating campaigns for the training of administrative workers, especially since the *raion* apparatus was intended to serve as a coördinating agency between the city and the village, and its workers were to serve as trail-blazers and guides in the activities of administration. There is still considerable confusion in the administration of *raion* affairs; in fact, it frequently happens that 19 or 20 inspectors, who are visiting village soviets over a period of two or three months, instead of improving the work of the lower soviets, create disorder and often actually upset the not over-efficient village workers.<sup>66</sup>

It is interesting to note that even in such advanced localities as the Moscow region, a state of affairs could be found a few years ago that was not at all encouraging. The following is a description taken from a Soviet publication and may serve as an illustration. "The *raion* administrative division occupies in Zuevo (the *raion* seat) a little house numbered 1064. A peasant coming from the country will have difficulties in locating it, since there has been no sign on the outside for the last eight months. As he enters he finds himself in a room blue with smoke as in an old tsarist pub, crowded and filthy. One can see here amazing things. To the right is the room of the agent, which measures

<sup>64</sup> *Raions* that have highly developed local industries and considerable communal property may, with the permission of the presidium of the All-Russian Executive Committee, form a technical department of road building.

<sup>65</sup> Chelyapov (ed.), *Osnovy Sovetskovo Stroitelstva*, p. 160. *Sobraniye Zakonov* (June 9, 1931), No. 36; *Sobraniye Usakonenii* (March 26, 1931, No. 11).

<sup>66</sup> *Vlast Sovetov* (1931), No. 12.

one-half by one-half *arshine*. Near the table there is always someone sleeping. Above the table hang parts of bedding, scattered boots. At the table the agent questions a citizen, and two persons eat and drink tea. Noise and profanity. In a bookcase in which documents are filed may be seen a *balalaika* (Russian guitar). A short distance away is located a general office where there can be seen a bookcase and a few tables. There is no place to turn around. A narrow passageway is left open leading to the chief's office. In the general office there is also laughter, noise, and loud talk. The office force does not have to work. From the general office room leads a door to the inner office where sits the chief and his assistant by a partly open window; they are used to noise and profanity."<sup>67</sup>

In order to remedy this sad state of affairs, some *raions* hold regular monthly conferences of soviet workers, and in connection with them schools of instruction for village soviet workers. Each worker receives at the conclusion of the instruction period a summary of the lectures and suggestions for further practical work. In some *raions*, the work has been so arranged that *raion* officials who are to serve in an advisory capacity to the lower soviets are compelled to stay in the field for at least five months.

*The oblast or krai (region)*. After the abolition of the old province (*guberniya*) and the establishment of *oblasts*, many undertakings and institutions previously under the authority of the provinces were transferred to the jurisdiction and management of the new divisions. In these are included not only purely *oblast* enterprises, but also establishments of republican and nation-wide significance. The *oblasts* cooperate in the organization of new enterprises, the execution of measures in the rationalization of production, and the decrease of cost of production. The *oblast* soviets give opinions on planned programs, accounts, balances, etc., and distribute profits of state commercial undertakings. In the field of agriculture, the *oblast* organs take measures to regulate the development and collectivization of agriculture, direct all agricultural corporations under their jurisdiction, and take measures for the strengthening and development of state farms, collective farms, and all types of agricultural coöperatives. In addition, to the *oblast*

<sup>67</sup> From the newspaper *Kolotushka* (May, 1930), as quoted in *Administrativnye Organy v Novykh Usloviyakh*, p. 36.

are delegated some very important functions in connection with transportation, state credit, cultural construction, public safety, communal economy, and other matters of state activity.

*Oblast organs of authority.* The highest organ of authority within the limits of the *oblast* is the *oblast* soviet. This body makes decisions on all questions of *oblast* importance and considers matters of general state significance. The soviet hears and discusses reports in regard to the activities of state institutions and undertakings located within its territory. To the soviet is reserved the exclusive authority to examine and approve reports of the work of the executive committee. To the soviet also is reserved the right to elect the executive committee and the delegates who represent it at the superior congresses. Before the adoption of the New Constitution, the membership of the *oblast* soviet was composed of delegates from city soviets, factories and plants, *raion* and autonomous regions, and coöperative farms situated outside of city limits. The New Constitution has abolished indirect representation and has provided that the delegates to oblast soviets are to be elected by direct ballot by the voters of the territory for two years.

Between sessions of the soviets, the highest organ of authority in the *oblast* is the executive committee, which is elected by the soviet. Provision is made by the New Constitution for election by the soviet of a chairman, vice-chairman, and secretary. This committee has identical jurisdiction with the soviet, except in matters that are reserved for the exclusive jurisdiction of the soviet; namely, the approval of the election of the executive committee, and approval of its report. In its activity, the executive committee is subordinate and responsible to the *oblast* congress, and also to the republican central executive committee and presidium of the republic within whose territory it is located.

For the purpose of administration, the executive committee is divided into departments which are designated as (1) the regional council of people's economy, (2) agriculture, (3) trade, (4) finance, (5) communal department, (6) labor, (7) popular education, (8) public health, (9) social welfare, (10) workman-peasant inspection, (11) administration, (12) military, (13) political, (14) the bureau of archives. The current work of administration is in practice carried out by a presidium, elected by the executive committee and divided into four



departments—(a) secretariat, (b) organization department, (c) planning commission (*obplan*), (d) commission of execution.

Administration of justice in the *oblast* is carried out by the *oblast* courts and department of justice (*prokuratura*). For the purpose of coordinating the work of the *oblast* with that of the Union, the central government is represented in the *oblast* by officials from the commissariats of transportation, posts, and telegraphs, and the division for the administration of affairs of national minorities.<sup>68</sup>

### *Sec. 6. Central-Local Relations and Obligatory Decrees*

In the early days of the Soviet régime, there was considerable confusion as to the right of lower organs to issue obligatory decrees. Attempts made by the central government to bring about uniformity were nullified, in general, by chaotic conditions of the country. Not until March 11, 1921, were some definite norms established. Since that time various regulations have been passed defining the competence of the various units of government to issue obligatory decrees.<sup>69</sup>

*Power to issue obligatory decrees.* On March 30, 1931, legislation was passed providing that the authority to issue obligatory decrees belongs to executive committees and their presidia, and to city soviets and their presidia.<sup>70</sup> Departments of executive committees and other local institutions were prohibited to encroach upon this activity. It was provided, however, that should it be necessary for these departments to issue ordinances, they must petition the appropriate executive committees and city soviets. The right to issue obligatory decrees may not be delegated. Between 1927 and 1931, *raion* executive committees were given the right to issue obligatory ordinances in regard to the safeguarding of order and the suppression of rowdyism, and also the protection of state and public property. In addition, *raion* executive committees were given the authority to issue obligatory decrees and rules in all matters concerning the conduct of business, fairs, markets, and places assigned for purposes of trade. Urban soviets, in centers other than governmental seats, which had a population up to 5,000, were placed on equality with those of *raion* executive committees in this mat-

<sup>68</sup> Chelyapov (ed.), *Osnovy Sovetskovo Stroitelstva*, Chapter VII.

<sup>69</sup> See Elistratov, *Administrativnoye Pravo*, pp. 143-4.

<sup>70</sup> For an account of subjects upon which local organs may pass decrees, see B. W. Maxwell, *The Soviet State*, pp. 110-111.



ter. Governmental seats and other urban settlements which had a population of above 5,000 had the same rights as *raion* executive committees. The most important cities, as far as passing decrees was concerned, were given the legal status of superior executive committees.

Obligatory decrees may be issued for not longer than two years' duration. After that period they automatically become void unless they are newly confirmed and republished for an additional period of time by the appropriate organs. To every obligatory ordinance there must be attached a provision for fines or punishment for its violation, both in administrative and judicial order, in accordance with the provisions of the Criminal Code.

The law prescribes the manner according to which obligatory decrees may be issued. The project of the decree must be discussed at a meeting of the appropriate section of the soviet or executive committee and at general meetings of workers and farm collectives. Exceptions to this rule may be made under the pressure of extraordinary circumstances. The obligatory ordinances must be signed by the chairman of the executive committee or the city soviet. They must be given publicity; every obligatory decree must specify the territory in which the ordinance is to be in force and when it is to come into effect. The decree must be announced two weeks before it goes into operation; exceptions may be made in emergencies. Obligatory decrees need no confirmation of the superior authorities in order to become legally operative, provided that they do not violate higher regulations already in operation. Theoretically, then, the lower organs are given some degree of independence from the supervision of the superior authorities. Practically the higher authorities retain control, since the law provides that, in order to secure for the superior organs the opportunity to examine the decrees, every obligatory decree must be sent to the next higher executive committee. Furthermore, the obligatory decrees that are issued by regional executive committees must be sent to the appropriate central authorities of the R.S.F.S.R. or to appropriate autonomous republics.<sup>71</sup>

<sup>71</sup> The judiciary is not separated from the political functions of the state, but has been created for the purpose of administering not impartial but proletarian justice. The issuance of normative acts by various departments of government is still characterized by an absence of uniformity. Elistratov, *Administrativnoye Pravo*, pp. 146-7.

*Exaggerated centralism.* It is not an easy task to evaluate local government in the Soviet Union. The present system of local government is still too much under the influence of militant bolshevism and is motivated by fear of counter-revolution and invasion. The localities as yet have not been permitted to develop adequate administrative machinery. Too much stress is laid upon the idea that the local soviets are merely the "cells" of the Soviet state apparatus, that is, organs of proletarian dictatorship. The party directions must be obeyed without question as to adaptability to local conditions.

The movement toward particularism in the early years of the Soviet régime, when there was a tendency to form independent soviet communities, gave place to the reaction of excessive centralism. The Bolshevik teachings of "democratic centralism" frequently are converted into bureaucratic centralization. Lenin's insistence on "centralized direction and decentralized activity" for local governments has often degenerated into rule from above to such an extent as to stifle local initiative. In addition, the infiltration of national issues into the activities of local governments has created such heavy burdens as to paralyze the not too efficient civic authorities. This policy becomes especially obnoxious when it is considered that, after all, no matter what decisions local soviets may make in regard to general policies, the last word is reserved to the central organs of the Communist party.

*Groping toward democracy.* Yet it can readily be seen by any open-minded observer that the Soviet Union is groping its way toward democracy—a democracy radically different, to be sure, from the accepted Western conception. The central government is still laboring under the psychosis of counter-revolution and intervention; hence the fear of permitting local self-government which results in constant interference and regulation of details of local economy that could far better be left to the communities themselves. It is, nevertheless, only fair to state that the Soviet localities are awakening and planning a brighter future for their inhabitants. "Deaf villages" and backward settlements are put into touch with the rest of the country through the radio loud speaker and motion pictures.<sup>72</sup> Modern improvements are being installed in workers' quarters, and greens and playgrounds

<sup>72</sup> See B. W. Maxwell, "Political Propaganda in Soviet Russia," in H. L. Childs (ed.), *Propaganda and Dictatorship*, Chapter III.

are being provided for sports and games. New cities are being built where there were only wastes and desert. Since 1923, hundreds of millions of rubles have been expended in rehabilitating public services destroyed in revolution and civil war, and new public service systems have been established in more than 30 cities. Before the revolution, only 15 per cent of even the important cities in Russia had public lighting systems, and only 10 per cent had electric illumination; the remainder used kerosene or gas. To date, however, over 90 per cent of the larger cities in Soviet Russia have installed electric lights. The fire-fighting apparatus in the more important municipalities has been motorized. The telephone and the municipal transportation systems have been improved and extended, and the construction of a subway in Moscow, the first in Russia, has been completed. Without seeming unduly optimistic one cannot deny that every attempt is being made in the Soviet Union to overcome great difficulties and that in many instances the struggle has been successful, in spite of the unwieldy and top-heavy Soviet administrative apparatus.

A few years ago, before the rise of Hitler, there were indications that some of the repressions of the Soviet system might give place to a freer atmosphere. But with general European conditions as they are, it is doubtful whether any change can be expected in the near future. If, however, by some unforeseen event conditions in Germany should bring about a change in her foreign policy, the New Constitution recently adopted might actually be put into operation, and then the creative genius of the peoples of the Soviet Union may have an opportunity to express itself freely.

### BIBLIOGRAPHY

In English—

(Before the coming of the Bolshevik régime)

Astrov, Municipal Government and the All-Russian Union of Towns, New Haven, 1929.

Polner, Obolensky and Turin, Russian Local Government, During the War and the Union of Zemstvos, New Haven, 1930.

Robinson, G. T., Rural Russia Under the Old Regime, New York, 1932.

(Under the Bolshevik régime)

The Constitutions of the Soviet Union and the R.S.F.S.R.

Batsell, W. R., Soviet Rule in Russia, New York, 1929.

Harper, Samuel N., *Civic Training in Soviet Russia*, Chicago, 1929; also *The Government of the Soviet Union*, New York, 1938.

Maxwell, B. W., *The Soviet State*, London, 1935.

Simon, E. D., editor, *Moscow in the Making*, 1937.

Occasional articles in the *Slavonic Review*, *Soviet Russia Today*, *Moscow News*, *Research Bulletin on the Soviet Union* (Monthly, published by the American-Russian Institute, New York City)

Webb, Sidney and Beatrice, *Soviet Communism: a New Civilization?* (vol. I) New York, 1936.

#### In Russian—

Chernytov, A., *Zakony o Rabote Selsoveta i Evo Sectsii* (Laws in Regard to the Activities of the Village Soviet and Its Sections)

Chugunov, S., *Voprosy Organizatsii Nizovovo Sovetskovo Apparata—Gorsovety* (Problems of Organization of the Lower Soviet Apparatus—City Soviet)

Chugunov, S., *Voprosy Organizatsii Nizovovo Sovetskovo Apparata—Selsovety* (Problems of Organization of the Lower Soviet Apparatus—Village Soviets)

Elistratov, A. E., *Administrativnoye Pravo* (Administrative Law)

*Gosudarstvennyy Apparat S.S.S.R.* (The State Apparatus of the U.S.S.R.)

Kaganovitch, L. M., *Mestnoye Sovetskoye Samoupravleniye* (Local Soviet Self Government)

Luzhin, A. and Rezunov, M., *Nizovoi Sovetsky Apparat* (The Lower Soviet Apparatus)

*Mestnye Organy Vlasti* (The Local Organs of Authority)

Michailov, G. S., *Mestnoye Sovetskoye Upravleniye* (Local Soviet Administration)

*Nizovye Organy Vlasti* (the Lower Organs of Authority)

*Polozheniye o Selskich Sovetach* (The Decree in Regard to Village Soviets)

*Sobraniye Uzakonenii i Rasporazhenii* (Collection of Operative Laws and Decrees)

*Sobraniye Zakonov* (Collection of Laws)

#### Periodicals and Newspapers:

*Sovetskoye Stroitelstvo* (Soviet Construction)

*Vlast Sovetov* (The Power of the Soviets)

*Izvestiya* (Organ of the Central Executive Committee of the U.S.S.R. and the All-Russian Central Executive Committee)

*Journal de Moscou*—occasional articles.

## PART II. FUNDAMENTAL DOCUMENTS

## A. DECREE IN REGARD TO CITY SOVIETS, ISSUED BY THE CENTRAL EXECUTIVE COMMITTEE, JANUARY 20, 1933

*Chapter I**General Regulations*

1. City soviets are the organs of proletarian dictatorship, uniting and embracing all the working population in the socialist construction and administration of the state; city soviets as higher organs of power on their territory decide all local questions and problems in connection with institutions and undertakings directly subordinate to them, and also discuss the activities of the Government and the higher executive committees.

2. The city soviets coöperate with those state and coöperative undertakings which are not subordinate to the city soviets. The city soviets control the activity of these undertakings without interfering with the conduct of their business.

3. City soviets conduct their work in accordance with the laws and decrees of the higher organs and also according to the instructions of the voters.

4. City soviets are formed in all cities and in workers' and health resorts.

City soviets are elected for a period of one year<sup>1</sup> in accordance with the norms established by special laws.

At the same time when members of the city soviets are elected alternates (candidates) are elected to the number of one-third of the entire membership of the city soviet.

A reelection of the soviet may be demanded by not less than one-third of all voters of a city or a settlement before the term is over. This may also be done by the decision of appropriate congresses of soviets or their executive committees.

5. In cities with a population of over 100,000 by the decision of the city soviet there may be formed ward (*raion*) soviets.

In special cases the central executive committees of autonomous republics and regional executive committees may give permission for the forming of ward soviets in cities with a population of less than 100,000.

Ward soviets in cities operate in accordance with special legislation passed for that purpose.

6. City soviets elect delegates for the *raion* and regional congresses of soviets, for the republican congresses of soviets of autonomous re-

<sup>1</sup> The New Constitution invalidates this provision. See p. 438.

publics, for the All Russian and All Union Congresses of Soviets; the order of election of delegates is regulated by the Constitutions of the R.S.F.S.R. and the U.S.S.R. and by special legislation.<sup>2</sup>

7. City soviets are subordinate to the *raion* and higher congresses of soviets, their executive committees, Council of People's Commissars of the R.S.F.S.R., the All Russian Central Executive Committee and its presidium.

The soviets of cities which are centers of autonomous republics and regions are subordinate directly to the central committee of the autonomous republics and the regional executive committees. To the same organs may also be subordinated, by special decision of the presidium of the All Russian Central Executive Committee, the soviets of other cities and workers' settlements which have important industrial and cultural significance.

8. To cities mentioned in the second paragraph of section 7 may be attached the adjoining and directly bordering rural communities.

The order in which rural communities may be attached to cities and the relationship of the city soviet to the appropriate rural soviets are decided upon by special legislation.

## Chapter II

### *The Fundamental Functions of the City Soviets*

9. In the sphere of popular economic planning and accounting, city soviets:

(a) prepare plans of economic and social-cultural construction of their cities and control their execution; they discuss the plans of other institutions on their territory which are not subordinate to them and give their opinion on them;

(b) they perform all accounting and statistical work.

10. In the sphere of the technical reconstruction of socialist industry, city soviets:

(a) secure the fulfilment of the industrial-financial plans of the industries and undertakings subordinate to the city soviet; the technical reconstruction, the obtaining of new industries, the fulfilment of plans of capital construction, the strengthening of individual management and cost accounting, mobilization of internal resources, the betterment of the quality of production, and coöperation with undertakings which are not subordinate to the city soviets;

(b) they encourage mass production, utilization of local raw materials, and they survey the local resources of raw materials and fuel;

<sup>2</sup> Obsolete since the adoption of the New Constitution; see Section 143 of the New Constitution of R.S.F.S.R., p. 441, *infra*.



(c) they take necessary steps to develop industrial coöperation, production of goods of general demand, and production of building materials, development of industries and production which serve the socialist industry and rural economy.

11. In the sphere of the socialist reconstruction of city economy, city soviets:

(a) control the communal economy and housing of cities, plan and regulate the communal and housing economy and the building of all categories<sup>3</sup> of tenants who repair or erect houses at their own cost; they also carry out technical control over housing projects and the cultural life of the city;

(b) they regulate in accordance with the law the distribution of living space and take measures for the timely repair of houses, and supervise the observance by all tenants of technical and sanitary rules;

(c) they supervise town planning and see to the location of industries, transport, housing projects, and social-cultural institutions in cities;

(d) they take necessary steps to develop housing coöperatives and supervise their activities;

(e) they organize the construction of social institutions, parks of culture and rest, nurseries, kindergartens, playgrounds, laundries and baths;

(f) they take necessary steps to develop electrification and fuel supply and other necessities of the city population;

(g) they organize and strive to develop city transportation, they carry out the building of roads and bridges, see to the orderliness of streets and the regulation of traffic on city streets;

(h) they manage the water supply, drainage, and sewage;

(i) they take the necessary steps to develop the utilization of urban land, forests, and the planning of green plots;

(j) they supervise the production and utilization of local and new building materials and also the production of equipment for the needs of communal and housing economy;

(k) they organize anti-fire protection for the cities, strengthen the state and community anti-fire organizations, and coöperate with industrial organizations not subject to the city soviet, in measures of fire protection.

12. In the sphere of socialist reconstruction of agriculture, city soviets:

(a) take necessary steps to develop collectivization in the villages attached to cities, render assistance to state farms (*sovkhos*) and to the motor tractor stations, and to liquidate the *kulaks* as a class, building on a foundation of total collectivization;

<sup>3</sup> Individuals and coöperatives.



(b) they assist state farms (*sovkhos*), collective farms (*kolkhos*), and individual peasants' households, paying special attention to the increasing of the yield, and guaranteeing that all of them will fulfil their obligations toward the state;

(c) they assist the villages attached to them in the organization of social-cultural institutions and render assistance in the development and strengthening of village cultural-social institutions;

(d) they open peasants' houses and supervise their activities.

13. In the sphere of labor and the preparation of staffs of specialists, city soviets:

(a) assist the enterprises in the planned recruiting of the necessary labor force;

(b) they take necessary steps to organize the new staffs of specialists in the sphere of rural economy and social-cultural construction;

(c) they endeavor to undertake measures to secure the induction of women into production;

(d) they take necessary steps in increasing productivity of labor and a wider development of socialist forms of labor, the strengthening of industrial discipline; they conduct the struggle to decrease transitory labor, loafing, irresponsible management, and to bring about the smooth running of undertakings and institutions;

(e) they assist in rationalization of work and utilization of inventions;

(f) they see to the protection of health conditions of labor and organize technical-safety and industrial sanitation.

14. In the sphere of supply, consumers' coöperation and trade, city soviets:

(a) control the local trade and prices, secure the development of turnover of goods, development and betterment of work in state and coöperative enterprise; regulate the order of business and decide upon the control of assortment, quality, and prices of goods;

(b) they organize in cities and suburban settlements, state farms, gardens, dairy farms, stock farms, etc., and coöperate in the building up of suburban households by state, coöperative, and other public organizations;

(c) they secure fair management in the administration of plants and the organization of leadership for supplying of workers with necessary raw materials;

(d) they manage the building of common dining halls, factory kitchens, bakeries, and take measures for the improvement and the lessening of the expense of public feeding, and secure sanitary conditions in common dining halls and the improvement of service;

(e) they organize the trade of state farms, collective farms, collective farmers and working individual farmers in public bazaars and markets, and carry on the struggle against private traders and speculators;

(f) they build and supervise warehouses for the improvement of the storing of food and other commodities;

(g) they secure the correct and timely preparation and execution of provisional plans.

15. In the sphere of transport and communication, city soviets:

(a) coöperate in the betterment of the work of all kinds of out-of-town transport and its reconstruction, organize transportation for the connection of cities with nearby factories, plants, state farms, collective farms, etc.;

(b) they take necessary steps to improve freight loading and unloading and its mechanization;

(c) they assist the organs of communication in their work, co-operate in the development of the telephone and wireless service;

(d) they render assistance to civil aviation and the building of airdromes, airports, etc.

16. In the sphere of finance and budget, city soviets:

(a) draft and confirm the city budget and control its expenditure;

(b) they prepare control figures and approve the ward (*raion*) budgets;

(c) they decide upon the rate of local taxes and imposts within the limit of the law and see to the non-tax revenue;

(d) they secure the fulfilment of plans for the utilization of the financial resources of the population by means of circulating state loans, improvements of the saving system and voluntary insurance;

(e) they supervise the activities of the credit system and secure the correct execution of the credit policy and the strengthening of credit discipline;

(f) they negotiate loans and perform other credit operations within the limits established by law;

(g) they prepare and confirm all financial plans connected with national economy and social-cultural construction.

17. In the sphere of the carrying into practice of the Lenin National Policy and the struggle against its distortion, the city soviets:

(a) take necessary steps toward bringing about the fulfilment of the social-cultural needs of national minorities and educating them and serving them in their native language;

(b) they take all measures to attract national minorities to national work and to form corps of qualified specialists among them.

18. In the sphere of social-cultural construction, the city soviets:

(a) direct the carrying into practice of universal education, the final liquidation of illiteracy and semi-illiteracy, and develop mass professional and technical education;

(b) they encourage polytechnical education;

(c) they organize mass pre-school and out-of-school education of children, safeguard maternity and infancy, safeguard the health of children and adolescents and take measures for the final liquidation of homeless waifs;

(d) they promote personal hygiene and medical prophylactic measures and direct physical culture institutions;

(e) they organize the industrial reëducation of the incapacitated, fix and pay out pensions to them, and see to their reëmployment; they coöperate in the development of public organizations within the system of the organs of social security;

(f) they take all necessary steps in establishing institutions of popular education, protection of public health and social security and take measures to include as large a number as possible to be served at these institutions;

(g) they keep the register of deeds.

19. In the sphere of revolutionary law, safety, and order, city soviets:

(a) organize the defense of socialist property and all other conquests of the proletarian revolution;

(b) they see to the strict observance of Soviet laws, issue obligatory regulations and control the correct imposition of administrative fines;

(c) they supervise and control the activities of police organs (*militia*) and carry into effect the measures for the enforcement of the passport system;

(d) they form city law courts and supervise their activities; they organize legal aid to the toilers;

(e) they supervise all corrective industrial institutions.

20. In the sphere of building and strengthening the armed forces (the Red Army) of the proletarian state, the city soviets:

(a) render every assistance to the military authorities and secure successful carrying out of recruiting calls, and in all phases of military preparation;

(b) they take care of the families of persons serving in the Red Army;

(c) they coöperate in promoting military knowledge among the toilers, and develop voluntary societies for the strengthening of the defense of the country.

21. In the sphere of Soviet construction, the city soviets:

(a) direct the preparation and the carrying out of elections to the city soviets;

(b) they invite the mass organizations of toilers to continuous participation in state administration and the struggle with bureaucratic distortion in the state and coöperative apparatus and take measures for the improvement of the personnel in the state apparatus;

(c) they organize through the city organs the Workers'-Peasants' Inspection <sup>4</sup> of institutions, together with the leadership of the professional unions, factories, and plants;

(d) they check up on the execution of laws, decrees or decisions of superior organs in the city soviet by institutions and organizations;

(e) they observe the activities of voluntary associations and see to it that they take part in the activities of socialist construction.

(Chapters III, IV, V, VI, VII omitted)

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<sup>4</sup> This institution has been abolished.

B. EXTRACTS FROM THE CONSTITUTION OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC, ADOPTED JANUARY 21, 1937

*Chapter VIII*

*Local Organs of State Power*

Section 77. The organs of state power in regions, autonomous regions, national circuits, administrative circuits, *raions* (districts), cities, settlements, and villages are the soviets of deputies of toilers.

Section 78. Regional soviets of deputies of toilers, soviets of deputies of toilers of national and administrative circuits, *raions*, cities, and ward soviets of large cities, settlements and villages are elected directly by the toilers of regions, national circuits, administrative circuits, *raions*, cities and villages for a period of two years.

Section 79. The soviets of deputies direct the cultural-political and economic construction of their respective territories, decide upon the local budgets, direct the activities or organs of administrations subordinate to them, safeguard public order, cooperate in the strengthening of the defense of the country, secure the keeping of laws and protect the rights of citizens.

Section 80. The soviets make decisions and issue decrees within the limits prescribed by the laws of the U.S.S.R., the R.S.F.S.R., and the autonomous republics.

Section 81. The executive and administrative organs of the soviets are elected by their executive committees which consist of a chairman, vice-chairman, secretary and members (of the soviet).

Section 82. The executive and administrative organs of small settlements are the elected chairman, vice chairman and secretary.

Section 83. The executive committees of soviets supply the direction in the cultural-political and economic construction in their respective territories in accordance with decisions of the appropriate soviets and the superior state organs.

Section 84. Meetings of regional soviets are called by their executive committees at least four times a year.

Section 85. Meetings of soviets in *raions* and administrative circuits are called by their executive committees at least six times a year.

Section 86. Meetings of soviets in cities and villages are called by their executive committees at least once every month.

Section 87. The soviets in regions, national and administrative circuits, *raions* and cities elect at their meetings a chairman and secretary who conduct the business of the meeting.

Section 88. The chairman of village soviets calls the meetings of the soviets and conducts the business of the meeting.

Section 89. The executive organs of soviets are directly subordinate not only to their respective soviets which have elected them, but also to the executive organs of the superior soviets.

Section 90. The superior executive committees of soviets have the authority to change the decisions and decrees of the lower executive committees and nullify the decisions and decrees of the lower soviets.

Section 91. Superior soviets have the authority to amend (or change) decisions and decrees of lower soviets and their executive committees.

Section 92. Regional soviets form the following departments in their executive committees:

Land	Communal Economy
Finance	Social Security
Internal Trade	Roads
Public Health	General
Public Education	Arts
Local Industry	Planning
Personnel (in charge of the chairman of the executive committee)	

In addition, subject to the confirmation of the Peoples' Commissariats of Light Industry, Food Industry, Timber Industry, State Grain and Cattle Farms (*sovkhozy*) and depending upon particular economic conditions of a region, the following administrative divisions and bureaus may be formed: light industry, food industry, timber industry, state grain and cattle farms.

Section 93. Depending upon special conditions of the region and in accordance with the laws of the U.S.S.R. and R.S.F.S.R. the All Union People's Commissariats and the People's Commissariat of Internal Affairs establish administrative bureaus in connection with regional soviets. The Committee on Projects appoints to the regional soviets their plenipotentiaries.

Section 94. Departments and bureaus of the regional soviets are subordinate in their activities not only to the appropriate regional soviet and its executive committee but also to the appropriate People's Commissariat of the R.S.F.S.R.

Section 95. Soviets in administrative circuits and their executive committees form departments and conduct their work in accordance with the laws and decrees of the higher organs of the R.S.F.S.R. and the decisions of the regional soviets.

Section 96. The executive committees of the *raion* soviets organize the following departments:

Land	Public Health
Public Education	Social Security
Finance	General
Internal Trade	Roads
Planning	Personnel (in charge of the chairman of the executive committee)

In addition, in accordance with special economic conditions of the *raion* and with the confirmation of the regional soviet, the *raion* soviets may also organize departments of communal and local industry.

Section 97. Depending upon special conditions of the *raion* and in accordance with the laws of the U.S.S.R. and the R.S.F.S.R. and subject to the confirmation of the regional soviet the People's Commissariat of Internal Affairs establishes its bureaus in connection with the *raion* soviets.

Section 98. The departments of *raion* soviets are subordinate in their activity not only to the *raion* soviet and its executive committee but also to the appropriate department of the regional soviet.

Section 99. City soviets organize the following departments in connection with their executive committees:

Finance	Social Security
Communal Economy	General
Internal Trade	Planning
Public Health	Personnel (in charge of the chairman of the executive committee)
Public Education	

In addition, depending on special industrial conditions of the city and its municipal and suburban economy, the following departments are organized: Local Industry, and Land.

Section 100. Departments of city soviets are not only subordinate in their activities to the city soviet and its executive committee but also to the appropriate department of the *raion* soviet and directly to the appropriate department of the regional soviet.

Section 101. Departments of city soviets in Moscow and Leningrad are not only subordinate to the Moscow and Leningrad soviets but also to the appropriate People's Commissariat of the R.S.F.S.R. directly.

Section 102. The soviets of national circuits and their executive committees carry into effect in their particular territories the rights and duties delegated to them by the "Decree in regard to national circuits" and also by decisions of the appropriate regional soviet. The "Decree in regard to national circuits" is issued by the Superior Council of the R.S.F.S.R.



*Chapter XII**The Electoral System*

Section 138. The election of deputies to all soviets: The Superior Soviet of R.S.F.S.R., the regional soviets, Superior Soviets of autonomous republics, soviets of autonomous regions, soviets of national administrative circuits, *raion*, city, and village are elected by voters on the basis of universal, equal and direct suffrage and by secret ballot.

Section 139. The election of deputies is by universal suffrage: All citizens of the R.S.F.S.R. who have reached the eighteenth year, independent of racial and national descent, religious confession, educational qualification, residence, social origin, property ownership and past activity, have the right to take part in the election of deputies and to stand for election, with the exception of insane persons, and those deprived of their electoral rights by judicial decision.

Section 140. The elections of deputies are equal; every citizen has one vote; all citizens take part in the election upon equal terms.

Section 141. Women have the right to vote, and to stand for election on equal terms with men.

Section 142. Citizens who are in the ranks of the Red Army have the right to vote and to stand for election on equal terms with all other citizens.

Section 143. The elections of deputies are direct; deputies to all soviets, beginning with the village and city soviets, inclusive of the Superior Soviet of the R.S.F.S.R. are elected directly by the citizens.

Section 144. The voting at elections of deputies is secret.

Section 145. The election of deputies to soviets of the R.S.F.S.R. is carried out in electoral circuits in accordance with the following norms: one deputy for every unit of no less than 15,000 and no more than 40,000 population, depending upon the extent of territory. To the soviet of an autonomous region one deputy to every unit of no less than 1,500 and no more than 2,000 population, depending upon the expanse of territory. To the soviet of a national circuit one deputy to every unit of no less than 100 and no more than 500 population, depending upon the expanse of territory. To the soviet of an administrative circuit, one deputy to every unit of no less than 2,000 and no more than 10,000 population, depending upon the expanse of territory. To the soviet of a *raion*, one deputy to every unit of no less than 500 and no more than 1,500 population, depending upon the expanse of territory. To a city soviet, one deputy to every unit of no less than 100 and no more than 1,000 population. To the soviets of the cities of Moscow and Leningrad, one deputy to each unit of 3,000 population. To village soviets one deputy to every unit of no less than 100 and no more than 250 population, depending upon the

amount of *raion* business performed by the village soviet. The electoral norms for every regional soviet and autonomous region soviet, national administrative circuit, *raion* and city soviet, are established by the "Decree in regard to the election of the soviet deputies of toilers of the R.S.F.S.R." within the limits of electoral norms stated in this section. The electoral norms for village soviets are established by the regional soviets, Superior Soviets of autonomous republics and the soviets of autonomous regions within the limits of electoral norms stated in this section.

Section 146. Candidates stand for election in electoral districts. The right to sponsor candidates is reserved for public organizations and associations of toilers: Communist Party organizations, professional unions, coöperatives, youth organizations, and cultural associations.

Section 147. Every deputy is obligated to give an account of his work to the voters and his activity in the soviet, and may be recalled at any time by decision of the majority of voters in accordance with the order established by law.

C. DECREE IN REGARD TO THE PEOPLE'S COMMISSARIAT OF  
COMMUNAL ECONOMY, 1937

(A Decree of the All Russian Central Executive Committee and the Council of the People's Commissars of the R.S.F.S.R. March 10, 1937)

The All Russian Central Executive Committee and the Council of the People's Commissars of the R.S.F.S.R. decree:

1. Confirm the decree in regard to the People's Commissariat of Communal Economy of the R.S.F.S.R.

2. With the coming into effect of this law the decree of December 10, 1931, in regard to the Commissariat of Communal Economy of the R.S.F.S.R. is repealed.

*Decree*

In regard to the People's Commissariat of Communal Economy of the R.S.F.S.R.

*Chapter I*

The functions of the People's Commissariat of Communal Economy of the R.S.F.S.R.

1. To the People's Commissariat of Communal Economy of the R.S.F.S.R. is delegated the direction of development of municipal housing and communal building, the development of the housing fund and communal undertakings, the socialistic reconstruction of the existing cities and the building of new cities.

2. In connection with these provisions the People's Commissariat of Communal Economy of the R.S.F.S.R. carries out the following tasks:

(a) puts into practice the organizational-economic and the operative-technical direction of the housing and communal economy and the building of local soviets;

(b) works out and introduces for the confirmation of legislative organs projects of laws in regard to housing and communal economy and building in accordance with established order and furnishes the leadership and control for carrying them into effect;

(c) composes unified or collective prospective annual and quarterly plans for housing and communal economy and building programs in cities and workers suburban health settlements and *raion* centers, plans for financing and credit for that economy and building program; and directs the execution of these plans;

(d) directs the planning of suburban developments, works out and issues norms, rules, and instructions in regard to questions of planning, the building up and the setting aside of plots in cities, workers' health and suburban settlements and *raion* centers;

(e) directs the development and technical reconstruction of housing and communal economy;

(f) works out and confirms rules and norms for the development of housing and communal economy (housing fund, hotels, water supply, sewage, street cleaning, electric power stations, heating, and gas in cities, city transportation, the building of sidewalks and streets, baths, laundries, barber shops, municipal lands, green plots, municipal woods, parks, etc.);

(g) carries out the general regulation and control for the execution of legal provisions for the payment for municipal services and the use of settled and vacant municipal lands;

(h) plans and controls the activities of housing coöperatives;

(i) carries out the technical supervision of the normal assets and utilization of the housing fund and controls the execution of plans of housing construction of other departments;

(j) regulates the individual housing construction and furnishes the general supervision of the correct use of habitable houses belonging to individual citizens;

(k) carries out the technical-economic regulations of housing and communal construction (works out and publishes typical projects, building norms and rules, etc.);

(l) confirms, in accordance with established order, projects and accounts of housing and communal construction;

(m) directs the activity of planning and building organizations under the jurisdiction of local organs of communal economy and those directly subjected to the authority of the People's Commissariat of Communal Economy of the R.S.F.S.R.;

(n) carries out in accordance with established order the acceptance of completed residential and administrative buildings, communal undertakings, and building projects;

(o) directs the production of communal equipment and building materials in the system of communal economy and administers commercial undertakings on the republican scale under the jurisdiction of the People's Commissariat of Communal Economy of the R.S.F.S.R.;

(p) directs the preparation of staffs, administers the educational institutions and scientific research establishments under its jurisdiction, details the directing staffs of economists and engineering technical workers;

(q) carries out other problems delegated to it by the laws of the R.S.F.S.R. and U.S.S.R.

*Chapter II*

The structure of the People's Commissariat of Communal Economy of the R.S.F.S.R.

3. At the head of the People's Commissariat of Communal Economy of the R.S.F.S.R. stands the People's Commissar of Communal Economy of the R.S.F.S.R. who is assisted by two deputies.

4. The People's Commissariat of Communal Economy of the R.S.F.S.R. is divided into the following main administrative bureaus:

I. The chief administrative bureaus:

1. The Chief Administrative Bureau of Housing Economy
2. The Chief Administrative Bureau of Architectural Planning
3. The Chief Administrative Bureau of Water Supply and Sewage
4. The Chief Administrative Bureau of Electrical Power
5. The Chief Administrative Bureau of Tramways
6. The Chief Administrative Bureau of Motor Traffic.
7. The Chief Administrative Bureau of the Public Baths and Laundry Economy
8. The Chief Administrative Bureau of Commerce for Building Materials and Equipment
9. The Chief Administrative Bureau for Building
10. The Chief Administrative Bureau for Educational Institutions.

II. Departments:

1. Planning and Economics
2. Welfare and the Building of Green Plots
3. Statistical
4. Legal
5. Department of Specialists
6. Administrative Financial.

5. Attached to the People's Commissariat of Communal Economy of the R.S.F.S.R. are the following bureaus:

1. Secretariat
2. The Personnel Bureau
3. Inspection Bureau
4. Bureau of Standardization
5. Bureau of Arbitration
6. Bureau of Appeals.

6. Attached to the People's Commissariat of Communal Economy of the R.S.F.S.R. is a council of the People's Commissariat, the staff of which is confirmed by the Council of People's Commissars of the R.S.F.S.R. in accordance with the recommendation of the People's Commissariat of Communal Economy of the R.S.F.S.R.

7. A republican trust for the supply of the Housing Communal Economy and Construction, called *Kommunsnab* (Communal Supply) is to be found in connection with the People's Commissariat of Communal Economy of the R.S.F.S.R.

8. Under the jurisdiction of the People's Commissariat of Communal Economy of the R.S.F.S.R. is to be found the State Academy of Communal Economy operating under a special statute.

### *Chapter III*

The directing of people's commissariats of communal economy  
of the autonomous republics

9. The People's Commissariat of Communal Economy of the R.S.F.S.R. directs the work of the people's commissariats of communal economy of the autonomous republics and carries out through them tasks of organization and direction of housing and communal economy of the autonomous republics.

10. Decrees and instructions of the People's Commissariats of Communal Economy of the R.S.F.S.R. are obligatory for people's commissariats of communal economy of the autonomous republics.

D. DECREE FOR THE IMPROVEMENT OF THE FINANCIAL WORK OF  
THE VILLAGE SOVIETS, ISSUED BY THE CENTRAL EXECUTIVE  
COMMITTEE

All councils of people's commissars of the constituent and autonomous republics, the regional and executive committees are obligated not later than January 1, 1936, to see to it that strong boxes (made either of iron or wood, or reinforced with iron) are introduced in all village soviets without exception. The boxes are to have reliable (and working) locks.

They are to order that in these boxes are to be kept all monies coming into the village soviet until they are delivered into the department or the state bank or the savings bank, and also all receipts, bonds, and valuable state papers and other valuable papers.

The key to this box is to be kept by the treasurer of the village soviet or by any person to whom is delegated the performance of financial duties.

The president of the village soviet carries direct responsibility for the safeguarding of the cash box (*kassa*) of the village soviet, the regular receipt and the payment by the treasurer of monies, and for the regular making out by the accountant or secretary of receipts and other financial documents of the village soviet.

January 29, 1937.<sup>5</sup>

<sup>5</sup> Date of publication of collected laws.





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